

**EXHIBIT 2**

**Avallone Deposition Transcript**

Page 2

1 UNITED STATES BANKRUPTCY COURT  
2 FOR THE NORTHERN DISTRICT OF ILLINOIS  
3 EASTERN DIVISION  
4 In re: ) Chapter 11  
5 Caesars Entertainment Operating ) Case No. 15-01145  
6 Company, Inc., et al., )  
7 ) Jointly Administered  
8 )  
9 \* \* \* \* \*  
10 VIDEO-RECORDED  
11 DEPOSITION OF: THOMAS AVALLONE  
12 DATE TAKEN: Wednesday, January 10, 2018  
13 TIME: 9:36 a.m. - 2:42 p.m.  
14 PLACE: Fairfield Inn Suites Marriott  
15 8214 Universal Boulevard  
16 Orlando, Florida 32819  
17 REPORTED BY: LAURA J. LANDERMAN, RMR, CRR, FPR  
18 Notary Public, State of  
19 Florida at Large  
20  
21  
22  
23  
24  
25

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1 A P P E A R A N C E S:  
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8 and  
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18 Advisors, LLC,  
19  
20 JEFFREY CHUBAK, ESQUIRE  
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27 Appearing on behalf of the Respondent.  
28  
29 THE VIDEOGRAPHER: Shawn Lane with  
30 Barkley Reporting  
31  
32 ALSO PRESENT: Jeffrey Sirolly, Esquire  
33 Deputy General Counsel with  
34 Earl Enterprises  
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1       **THE VIDEOGRAPHER:** We are now on the record in  
2       the matter of In Re: Caesars Entertainment  
3       Operating Company, Inc. Today's date is January  
4       10th, 2018, and the time is 9:36 a.m. This is the  
5       video-recorded deposition of Thomas Avallone being  
6       taken at 8214 Universal Boulevard, Orlando,  
7       Florida. My name is Shawn Lane. I'm the camera  
8       operator. And our court reporter today is Laura  
9       Landerman. We're both here on behalf of Barkley  
10      Reporting, 10350 Santa Monica Boulevard, Los  
11      Angeles, California.  
12      Will counsel please introduce themselves for  
13      the record?  
14      **MS. LEWIS-GRUSS:** My name is Ayanna  
15      Lewis-Gruss of Orrick, Herrington & Sutcliffe, LLP.  
16      I am here on behalf of Whitebox Advisors.  
17      **MR. CHUBAK:** Jeffrey Chubak from Storch Amini,  
18      PC, on behalf of Earl of Sandwich (Atlantic City),  
19      LLC.  
20      **MR. SIROLLY:** Jeff Sirolli, deputy general  
21      counsel for Earl Enterprises.  
22      **MS. LEWIS-GRUSS:** I'm going to add that I will  
23      also be joined by my colleague, Douglas S. Mintz,  
24      and when he joins, we can note that in the record,  
25      please.

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1       **THE VIDEOGRAPHER:** Will our court reporter  
2       please swear in the witness?  
3       **THE REPORTER:** Please raise your right hand.  
4       Do you swear the testimony you're about to give  
5       will be the truth, the whole truth, and nothing but  
6       the truth, so help you God?  
7       **THE WITNESS:** I do.  
8       **DIRECT EXAMINATION**  
9       **BY MS. LEWIS-GRUSS:**  
10      Q    Good morning, Mr. Avallone.  
11      A    **Good morning.**  
12      Q    And is that the correct pronunciation of your  
13      last name?  
14      A    **Avallone, yes.**  
15      Q    Can you please state your full name for the  
16      record?  
17      A    **Thomas Avallone.**  
18      Q    What is your business address?  
19      A    **4700 Millenia Boulevard, Suite 400, Orlando,**  
20      **Florida 32839.**  
21      Q    Have you ever had your deposition taken  
22      before?  
23      A    **Yes, I have.**  
24      Q    On how many occasions?  
25      A    **Two or three.**

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1       Q    And when did those depositions occur?  
2       A    **One was about 20 years ago, and one was about**  
3       **five years ago.**  
4       Q    And what was the context of the deposition  
5       that occurred about 20 years ago?  
6       A    **Licensing matter.**  
7       Q    And who -- what party did you appear on behalf  
8       of?  
9       A    **Plaintiff.**  
10      Q    Who was the plaintiff?  
11      A    **Hard Rock Cafe.**  
12      Q    And with regard to the deposition that took  
13      place approximately five years ago, what was the subject  
14      matter of the dispute?  
15      A    **It was a malpractice claim against a law firm**  
16      **in Minneapolis.**  
17      Q    And was that a personal malpractice claim that  
18      you had?  
19      A    **No. It was for one of our businesses.**  
20      Q    Which business was it for?  
21      A    **Buca, Inc.**  
22      Q    And when you say "our" business, who is the  
23      our that you are referring to?  
24      A    **One of the businesses -- one of Robert Earl's**  
25      **businesses.**

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1       Q    So I'm going to -- you know, this is standard  
2       deposition 101. You're probably familiar with it, but  
3       I'm just going to explain a few things to you. So I'm  
4       going to be asking you questions today. You are  
5       required to answer them under oath. Do you understand  
6       that?  
7       A    **Yes.**  
8       Q    And you need to answer my questions unless you  
9       have a good-faith basis to believe that my questions  
10      call for privileged information. Do you understand  
11      that?  
12      A    **Yes.**  
13      Q    So if you answer my question, I'm going to  
14      assume that you understand my question. If you don't  
15      understand my question, please let me know, so that we  
16      can make sure the record is clear. If your attorney  
17      objects, you still have to answer the question unless  
18      they instruct you not to answer based on the grounds of  
19      privilege.  
20      So is there any reason you can't give full,  
21      complete and accurate testimony today?  
22      A    **No.**  
23      Q    The court reporter, as you can see, is making  
24      a typed transcript. For the sake of the transcript and  
25      the record, if you could wait until I finish my question

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1 before you begin your answer. Thank you.  
2 So do you understand that you are appearing at  
3 this deposition in both your personal capacity and as a  
4 corporate designee of Earl of Sandwich (Atlantic City)?  
5 A Yes.  
6 Q What do you understand it to be that you are  
7 here as a corporate designee?  
8 A I'm answering the questions for Earl of  
9 Sandwich the entity.  
10 Q And do you understand that your answers will  
11 bind the entity?  
12 A Yes.  
13 (Avallone Exhibit Nos. 54 and 55 were marked.)  
14 Q Mr. Avallone, you've now been handed the  
15 documents that have been marked as Exhibits 54 and 55.  
16 Do you have them in front of you?  
17 A Yes.  
18 Q And Exhibit 54 is a notice for your  
19 deposition; is that correct?  
20 A Yes.  
21 Q And did you review this notice at any point  
22 prior to today?  
23 A Yes.  
24 Q When did you first review the document?  
25 A Shortly after it was received.

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1 Q And did you review it again in preparation for  
2 today's deposition?  
3 A I was shown a copy of it last night.  
4 Q If you could put it aside and look at the next  
5 document, Exhibit 55. Do you understand that this is  
6 the deposition notice for Earl of Sandwich (Atlantic  
7 City) pursuant to Rule 30(b)(6)?  
8 A Yes.  
9 Q Have you seen this document before?  
10 A Yes.  
11 Q When did you first review this document?  
12 A I don't recall when.  
13 Q When did you most recently review this  
14 document?  
15 A I think I saw a copy of it last night.  
16 Q And you understand that if you go to page 3  
17 and 4, that there are ten categories of information that  
18 you are here to testify to?  
19 A Yes.  
20 Q What did you do to prepare yourself to testify  
21 as to these ten topics?  
22 A Reviewed the e-mail stream between myself and  
23 various -- Cowen and other representatives of Cowen.  
24 Q Did you review any other documents?  
25 A No.

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1 Q You reviewed no communications internal to  
2 Earl?  
3 A I don't understand.  
4 Q So you said you reviewed communications with  
5 Cowen and representatives of Cowen, correct?  
6 A Yes.  
7 Q Did you review communications with Robert  
8 Earl?  
9 A Yes.  
10 Q Did you review communications with anyone else  
11 who is employed by or represents Earl of Sandwich or any  
12 related entity?  
13 A Not that I recall.  
14 Q Did you review e-mail communications with  
15 Bruce Hawkins?  
16 A Are you saying -- what period of time? I'm  
17 getting a little confused.  
18 Q In preparation for your deposition today, did  
19 you review e-mail communications with Bruce Hawkins?  
20 A No.  
21 Q What did you do to prepare for today's  
22 deposition?  
23 A I reviewed the e-mail stream.  
24 Q Did you meet with counsel?  
25 A Yes.

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1 Q When did you meet with counsel?  
2 A Two nights ago over dinner and then again last  
3 night.  
4 Q For how long did you meet with counsel last  
5 night?  
6 A Couple hours.  
7 Q Did you review any documents that refreshed  
8 your recollection of events relevant to this dispute?  
9 A Other than the e-mail stream, no.  
10 Q Did you speak to Mr. Earl about his  
11 deposition?  
12 A Very briefly.  
13 Q When did you speak to him?  
14 A For about 30 seconds last night and about a  
15 minute this morning.  
16 Q What did Mr. Earl tell you?  
17 A Just told me good luck.  
18 Q Did you review a transcript of Mr. Earl's  
19 deposition?  
20 A No, I did not.  
21 Q And do you understand that Rule 30(b)(6)  
22 requires that you must testify about information known  
23 or reasonably available to the organization?  
24 A Yes.  
25 Q So unless I state otherwise, I will be asking

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1 you questions in your capacity as Earl's 30(b)(6) or  
 2 corporate designee, as it's alternatively referred to,  
 3 witness. Do you understand that?  
 4 **A Yes.**  
 5 **MR. CHUBAK:** I think it makes sense to clarify  
 6 for the record that reference to Earl of Sandwich  
 7 as Earl of Sandwich (Atlantic City), LLC.  
 8 **MS. LEWIS-GRUSS:** Okay. We can go through it  
 9 with every question to make sure we're clear.  
 10 **MR. CHUBAK:** We don't need to go through it  
 11 with every question but for purposes of this  
 12 deposition.  
 13 **MS. LEWIS-GRUSS:** Okay. I was trying to agree  
 14 with you.  
 15 (Avallone [Exhibit No. 56](#) was marked.)  
 16 **BY MS. LEWIS-GRUSS:**  
 17 Q Mr. Avallone, do you have in front of you  
 18 what's been marked as [Exhibit 56](#)?  
 19 **A Yes.**  
 20 Q Is this your LinkedIn profile?  
 21 **A I assume so, yes.**  
 22 Q Is it your intention that the information on  
 23 the LinkedIn profile be accurate?  
 24 **A That would be nice.**  
 25 Q Do you -- in reviewing this document, is there

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1 anything that seems inaccurate to you?  
 2 **A No.**  
 3 Q And so is it correct that you are currently  
 4 the vice chairman of Planet Hollywood International?  
 5 **A Yes.**  
 6 Q And are you also the vice chairman of Earl  
 7 Enterprises?  
 8 **A Earl Enterprises isn't an entity, but, yes, I**  
 9 **hold myself out as vice chairman, yes.**  
 10 Q And so what is Earl Enterprises?  
 11 **A Earl Enterprises is sort of the trade name or**  
 12 **a name that we give to encompass all the entities that**  
 13 **are either owned, controlled or managed by Robert Earl**  
 14 **or one of his family trusts.**  
 15 Q And what's the difference between Earl  
 16 Enterprises and Planet Hollywood International?  
 17 **A Well, Planet Hollywood as a legal entity has**  
 18 **its own subsidiaries, its own ownership. Earl**  
 19 **Enterprises encompasses other entities other than just**  
 20 **Planet Hollywood.**  
 21 Q So Planet Hollywood has subsidiaries?  
 22 **A Yes.**  
 23 Q And Earl Enterprises encompasses other  
 24 entities other than just Planet Hollywood. Does that  
 25 mean that Earl Enterprises is a parent of Planet

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1 Hollywood and its subsidiaries?  
 2 **A No.**  
 3 Q So can you explain to me the relationship  
 4 between Planet Hollywood and Earl Enterprises?  
 5 **A Planet Hollywood is an entity that is**  
 6 **controlled or owned or managed by Robert Earl, so it**  
 7 **falls under that umbrella. There's no -- Earl**  
 8 **Enterprises is not an entity. It's not a -- it has no**  
 9 **shareholders. It's just a name that we use to reference**  
 10 **the group of companies.**  
 11 Q What organizations are part of Earl  
 12 Enterprises that are not part of Planet Hollywood  
 13 International?  
 14 **A There's Rawhide Holdings, Inc., which**  
 15 **effectively owns Earl of Sandwich restaurants. There is**  
 16 **also Orlando Co -- OCS Consultants that owns interest in**  
 17 **various other businesses. An Internet business called**  
 18 **Collide, a licensing business for Planet Hollywood**  
 19 **Resort and Casino in Vegas, some real estate.**  
 20 Q So who is the parent company of Rawhide  
 21 Holdings?  
 22 **A Rawhide Holdings is owned by the Rawhide**  
 23 **Trust.**  
 24 Q Is the Rawhide Trust alternatively referred to  
 25 as Robert Earl Family Trust?

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1 **A The actual name is Rawhide Trust, and it's a**  
 2 **trust set up for the benefit of Robert Earl's children.**  
 3 **We refer to it as the family trust, but that's not the**  
 4 **technical name.**  
 5 Q So is Earl Enterprises the name that is used  
 6 to refer to all entities owned and controlled by Rawhide  
 7 Trust?  
 8 **A That's one of the entities.**  
 9 Q There are other entities that are owned and  
 10 controlled by Rawhide Trust, is that correct, in  
 11 addition to Earl Enterprises?  
 12 **A You have to restate that question. I don't --**  
 13 Q I don't have to, but you'd like me to. So  
 14 what you said was --  
 15 **A If you want an answer, you have to. Please.**  
 16 Q You stated that Rawhide Trust -- that Earl  
 17 Enterprises is one of the entities that's owned and  
 18 controlled by Rawhide Trust. What other entities are  
 19 owned and controlled by Rawhide Trust?  
 20 **A Earl Enterprises doesn't own anything or**  
 21 **control anything. Earl Enterprises is the name that we**  
 22 **use to -- when we refer to businesses that are owned by**  
 23 **either Robert Earl or the trust.**  
 24 Q I wasn't asking about Earl Enterprises. I was  
 25 asking you about entities owned and controlled by

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1 Rawhide Trust. I said is Rawhide Trust the actual legal  
2 entity that owns and controls all the companies that you  
3 referred to as being subsidiaries or operating under the  
4 Earl Enterprises umbrella.  
5 **A No. It just is the parent company of all the**  
6 **businesses that are under Rawhide Holdings.**  
7 Q So what businesses are under Rawhide -- so  
8 Rawhide Trust is the parent of Rawhide Holdings,  
9 correct?  
10 **A Yes.**  
11 Q What businesses are under Rawhide Holdings?  
12 **A Earl of Sandwich USA, which encompasses the**  
13 **Earl of Sandwich brand. And then there's various**  
14 **subsidiaries under that, one of them being Earl of**  
15 **Sandwich (Atlantic City).**  
16 Q And that is the only company that is owned by  
17 Rawhide Holdings?  
18 **A There's -- there may be one or two other ones,**  
19 **but those are the other only operating businesses.**  
20 Q Who is the patient company of the restaurant  
21 group known as Buca di Beppo?  
22 **A Planet Hollywood International, Inc.**  
23 Q So what relationship does Planet Hollywood  
24 International, Inc., have to Earl of Sandwich USA?  
25 **A No direct relationship.**

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1 Q Does Planet Hollywood -- is Planet Hollywood  
2 International owned and controlled by Rawhide Trust?  
3 **A Planet Hollywood International, no.**  
4 Q Who is Planet -- is there a parent company of  
5 Planet Hollywood International?  
6 **A Yes.**  
7 Q What is that parent?  
8 **A There's not a patient. There's several**  
9 **owners.**  
10 Q Who are the owners of Planet Hollywood  
11 International?  
12 **A Planet Hollywood Resorts International, LLC,**  
13 **Robert Earl, the Holst Trust.**  
14 Q How do you spell that, please?  
15 **A H-O-L-S-T. And that's -- and then about 30**  
16 **very small holders less than 1 percent.**  
17 Q Are you one of those small holders?  
18 **A No, I'm not.**  
19 Q Who is the beneficiary of the Holst Trust?  
20 **A Robert's three children.**  
21 Q Who is the owner of Planet Hollywood Resorts  
22 International, LLC?  
23 **A OCS Consultants, Inc.**  
24 Q And OCS Consultants, Inc., is also a  
25 subsidiary of Rawhide Holdings?

Page 20

1 **A No.**  
2 Q No. So that OCS Consultants, Inc., is  
3 different than the company you said was a subsidiary of  
4 Rawhide Holdings?  
5 **A I never said OCS was a subsidiary of Rawhide**  
6 **Holdings.**  
7 Q Okay. So if we go back, you did say that  
8 OCS -- so is OCS part of the Earl Enterprises  
9 organization?  
10 **A That being one of the entities we would**  
11 **consider under the group.**  
12 Q Okay. So what is the difference between OC --  
13 between Planet Hollywood International and Earl  
14 Enterprises in terms of the companies that they include?  
15 **A Planet Hollywood has no ownership of Rawhide**  
16 **Holdings or any of their subsidiaries or -- which is**  
17 **Earl of Sandwich.**  
18 Q Do they both -- does Earl Enterprises and  
19 Planet Hollywood both manage the same companies?  
20 **A Earl Enterprises is just the name we refer to.**  
21 **It's not an entity. Planet Hollywood International,**  
22 **Inc., actually provides management services to all the**  
23 **group companies under -- that would be considered under**  
24 **this group of Earl Enterprises.**  
25 Q Does either Earl Enterprises or Planet

Page 21

1 Hollywood International maintain a chart that lists all  
2 of the companies that it owns, operates or otherwise has  
3 an interest in?  
4 **A Yes.**  
5 Q And who maintains that document?  
6 **A The legal department.**  
7 Q Does Planet Hollywood International maintain a  
8 document that lists all directors, officers and managers  
9 of any company that it owns, controls, or otherwise  
10 operates?  
11 **A Yes.**  
12 Q And because Earl Enterprises is not a legal  
13 entity, is it correct to assume that it does not  
14 maintain a list of officers, directors, executives of  
15 companies because it doesn't have any companies that it  
16 owns, controls or manages; is that correct?  
17 **A Yes.**  
18 Q But you hold yourself out in your e-mail as  
19 the vice chairman of Earl Enterprises, correct?  
20 **A Yes.**  
21 Q Why do you hold yourself out as being vice  
22 chairman of Earl Enterprises rather than vice chairman  
23 of Planet Hollywood International?  
24 **A Because it has a broader reach to all the**  
25 **different companies and not just -- not just Planet**

Page 22

1 **Hollywood.**  
 2 Q But Planet Hollywood International does  
 3 include some of the restaurants?  
 4 A **Some.**  
 5 Q But not all?  
 6 A **Correct.**  
 7 Q And is it correct that you serve as the  
 8 president of Earl of Sandwich (Atlantic City)?  
 9 A **Yes.**  
 10 Q Do you serve as -- and you're also the  
 11 secretary of Earl of Sandwich (Atlantic City)?  
 12 A **Yes.**  
 13 Q Are you an officer of any other entity?  
 14 A **Yes.**  
 15 Q What -- which other entities do you serve as  
 16 an officer for?  
 17 A **99 percent of all the entities of Planet**  
 18 **Hollywood, Earl of Sandwich, Rawhide Holdings, mostly --**  
 19 **all the entities, 99 percent of them. There may be one**  
 20 **or two small ones there's --**  
 21 Q And do you also own, either in part or in  
 22 whole, franchises for companies that operate under the  
 23 Earl Enterprises banner?  
 24 A **Do I personally?**  
 25 Q Yes.

Page 23

1 A **No.**  
 2 Q Was there a point in time when you did have  
 3 ownership or partial ownership of franchises?  
 4 A **No.**  
 5 Q Are you aware of any public statements or  
 6 legal filings in which it was stated that you were an  
 7 owner of Earl -- well, of franchises?  
 8 A **No.**  
 9 Q Are you aware that Planet Hollywood has filed  
 10 for bankruptcy in the past?  
 11 A **Yes.**  
 12 Q Which Planet Hollywood is it that filed for  
 13 bankruptcy?  
 14 A **Planet Hollywood International, Inc., and its**  
 15 **subsidiaries.**  
 16 Q And Planet Hollywood International, Inc., has  
 17 filed for bankruptcy twice?  
 18 A **Correct.**  
 19 Q And at the time that Planet -- during one of  
 20 those bankruptcies, it's not correct that you co-owned  
 21 about Mr. Earl a franchise of Planet Hollywood in Reno,  
 22 Nevada?  
 23 A **I did not.**  
 24 Q So prior to the time that you became the vice  
 25 chairman of Planet Hollywood International and Earl

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1 Enterprises, what positions did you have within Mr.  
 2 Earl's companies?  
 3 A **Do you want me to go through a history?**  
 4 Q Please.  
 5 A **Started in 1988 and I was the CFO of Hard Rock**  
 6 **Cafe International, the public company. Robert acquired**  
 7 **the company. We went -- we were public in 1987. That's**  
 8 **when I joined Hard Rock International. In 1988**  
 9 **Robert -- a company that Robert was controlling bought**  
 10 **Hard Rock Cafe, and I remained as CFO. Moved down to**  
 11 **Orlando, was put -- made CFO of some of the other**  
 12 **businesses related -- Orlando-related businesses, and**  
 13 **then became CFO of Planet Hollywood.**  
 14 **And then in 2008, we acquired Buca, Inc.,**  
 15 **restaurant company, and at that time I was made CEO or**  
 16 **president of that entity to turn it around. And then**  
 17 **after that, I became vice chairman sort of looking**  
 18 **after -- looking at additional M&A opportunities and**  
 19 **just looking after some of the businesses for Mr. Earl.**  
 20 Q Are you a member of any board of any  
 21 corporation?  
 22 A **Planet Hollywood International, Inc.**  
 23 Q Are there any others?  
 24 A **Not outside the group.**  
 25 Q Within the group, are you a member of the

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1 board of any other organizations?  
 2 A **I -- yes. I assume, yes. And to the extent**  
 3 **that they have boards, I would -- I would most likely be**  
 4 **on them.**  
 5 Q So much like you're an officer of 99 percent  
 6 of all entities within the group, you're also a member  
 7 of the board of the majority of entities within the  
 8 group to the extent they have boards?  
 9 A **To the extent they have boards.**  
 10 Q Are you also a manager of the majority of  
 11 entities that are within the group?  
 12 A **Yes. You know, some were member managed, some**  
 13 **manager managed, but in that capacity.**  
 14 Q Does Earl of Sandwich USA have a board?  
 15 A **No.**  
 16 Q What corporate positions do you hold for Earl  
 17 of Sandwich USA?  
 18 A **I'm not sure, but I believe I'm the manager.**  
 19 Q Are you the president of Earl of Sandwich USA?  
 20 A **I don't believe I have an officer title.**  
 21 Q Are there officers of Earl of Sandwich USA?  
 22 A **Operating officers, yes.**  
 23 Q Do you know if there's a president of Earl of  
 24 Sandwich USA?  
 25 A **We have a CEO for Earl of Sandwich USA,**

Page 26

1 several vice presidents of operations, but it's not --  
 2 they're not named in the operating documents as such.  
 3 Q You have an MBA from Case University; is that  
 4 correct?  
 5 A Yes.  
 6 Q Do you have any other advanced degrees?  
 7 A No.  
 8 Q How would you describe your job  
 9 responsibilities?  
 10 A I basically look after the businesses and look  
 11 after some of the day-to-day things and sort of bring  
 12 things to Robert's attention for him to make decisions  
 13 about.  
 14 Q What are the day-to-day things that you look  
 15 after?  
 16 A Just the running of the various departments.  
 17 We have presidents of each of the different brands and  
 18 just communicating with them what's happening. To the  
 19 extent that there's needs for development or requests, I  
 20 would sort of coordinate them and present them to Robert  
 21 for his approval.  
 22 Q Is there a document that lists your job  
 23 responsibilities?  
 24 A No.  
 25 Q Have your responsibilities changed throughout

Page 27

1 the course of your employment with Robert Earl?  
 2 A Yes.  
 3 Q When did they last change?  
 4 A After I -- after I was no longer the CEO of  
 5 Buca di Beppo restaurant chain and became vice chairman  
 6 was the last time it changed.  
 7 Q And you became vice chairman in 2012?  
 8 A Yes. I mean, around --  
 9 Q And when you became vice chairman, was there  
 10 an announcement made to the employees of the company?  
 11 A Yes.  
 12 Q And did that announcement list what  
 13 position -- the specifics of your position in any way?  
 14 A I don't recall.  
 15 Q How frequently do you travel for business?  
 16 A It depends, but I would say, generally, once  
 17 every other month or twice.  
 18 Q Do you travel with Mr. Earl when you travel on  
 19 business?  
 20 A Occasionally.  
 21 Q But not always; is that correct?  
 22 A Not always.  
 23 Q And do you travel internationally for  
 24 business?  
 25 A Yes.

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1 Q Is the majority of your business travel  
 2 domestic or international?  
 3 A Domestic.  
 4 Q And where within the U.S. do you travel most  
 5 frequently for business?  
 6 A New York, Las Vegas and California.  
 7 Q What business do you transact in New York?  
 8 A We have restaurants there.  
 9 Q How often do you meet with Mr. Earl?  
 10 A What do you mean by meet?  
 11 Q What do you mean -- what do you understand the  
 12 word "meet" to mean?  
 13 A In person? By phone? Correspondence?  
 14 Q So you consider -- when you have a phone call  
 15 with Mr. Earl, you consider that to be a meeting? I  
 16 just want to make --  
 17 A No, I don't. I consider a meeting as in  
 18 person.  
 19 Q So I want to make sure that we're using the  
 20 words in the same way, so that's an important  
 21 clarification.  
 22 A Yes.  
 23 Q So how do communicate with Mr. Earl?  
 24 A When he's in town, I meet with him either at  
 25 his house or in the office and then generally by phone

Page 29

1 and e-mail.  
 2 Q So how often do you meet with Mr. Earl in  
 3 person?  
 4 A When he's in town, pretty much every day if  
 5 not every -- every other day, if not more. When he's  
 6 not in town, occasionally, you know, if I know he's  
 7 going to be in California for a while, I will meet with  
 8 him and plan a trip around that when I know where he's  
 9 going to be to go through stuff. Sometimes I fly out to  
 10 California just to meet with him to go through issues.  
 11 Q What is or was the business of Earl of  
 12 Sandwich (Atlantic City), LLC?  
 13 A It operated Earl of Sandwich Restaurant in  
 14 Showboat Casino in Atlantic City.  
 15 Q Did Earl of Sandwich (Atlantic City) operate  
 16 that company, or did it just hold the lease for the  
 17 location in Atlantic City?  
 18 A It operated it.  
 19 Q Mr. Avallone, I'm handing you what's been  
 20 previously marked as Exhibit 36.  
 21 A Yes.  
 22 Q This document was described by your counsel as  
 23 a partial organizational chart. Do you agree with that  
 24 description?  
 25 A Yes, except the name Robert Earl Family Trust

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1 should be Hol -- should be the Rawhide Trust, the formal  
2 name.  
3 Q Does the Rawhide Trust have corporate  
4 officers?  
5 A Rawhide Trust has trustees.  
6 Q Who are those trustees?  
7 A Trustee -- the trustee's actually Lauren  
8 Investments Holding -- Lauren Investments or Lauren  
9 Holdings.  
10 Q And that's a single trustee? It has one  
11 trustee?  
12 A That is the single trustee. There are two  
13 directors of that entity that act -- that basically act  
14 as trustees.  
15 Q Who are those directors?  
16 A Thomas Kessler and Caroline Deletra.  
17 Q Rawhide Holdings -- does Rawhide Holdings,  
18 Incorporated, have any corporate officers?  
19 A I'm sure it does.  
20 Q Are you one of the officers of Rawhide  
21 Holdings, Incorporated?  
22 A I am.  
23 Q Do you know what title you have?  
24 A I don't.  
25 Q Is there a board of directors or board of

Page 31

1 members of Rawhide Holdings, Incorporated?  
2 A I'm not sure.  
3 Q And we talked about the corporate officers of  
4 Earl of Sandwich USA a few minutes ago; is that correct?  
5 A Yes.  
6 Q And forgive me if I'm repeating this question  
7 because I don't remember your answer.  
8 Is there a board of members of Earl of  
9 Sandwich USA?  
10 A I don't believe so.  
11 Q And you also don't believe there's a board of  
12 directors for Earl of Sandwich USA?  
13 A Correct.  
14 Q And all the corporate officer positions for  
15 Earl of Sandwich (Atlantic City) that existed were held  
16 by you most recently?  
17 A Yes.  
18 Q And even though that franchise is no longer  
19 operating, you still serve as the president and  
20 corporate secretary of Earl of Sandwich (Atlantic City)?  
21 A Yes.  
22 Q And you're also the CEO of Earl of Sandwich  
23 (Atlantic City); is that correct?  
24 A No, I don't believe so.  
25 Q You don't believe so. Okay. We'll come back

Page 32

1 to that.  
2 Are you the manager of Earl of Sandwich  
3 (Atlantic City)?  
4 A Yes.  
5 Q Are you the sole member of Earl of Sandwich  
6 (Atlantic City)?  
7 A Am I?  
8 Q Yes.  
9 A I am not a member.  
10 Q Who is a member of Earl of Sandwich (Atlantic  
11 City)?  
12 A Earl of Sandwich USA.  
13 Q And Earl of Sandwich USA is the sole member of  
14 Earl of Sandwich (Atlantic City)?  
15 A Correct.  
16 Q Does Rawhide Holdings incorporate or conduct  
17 any business itself or is, as the name suggests, just a  
18 holding company?  
19 A It's just a holding company.  
20 Q And Earl of Sandwich USA, LLC, has operations;  
21 is that correct?  
22 A Yes.  
23 Q What role, if any, do you have with regard to  
24 the Rawhide Trust?  
25 A I communicate with the trustees.

Page 33

1 Q Do you communicate with the trustees regarding  
2 the business of Earl of Sandwich USA, LLC?  
3 A Yes.  
4 Q And you also communicate with the trustees  
5 regarding the business of any other entity that the  
6 trust owns; is that true?  
7 A Yes.  
8 Q Mr. Avallone, you've been handed a document  
9 that was previously marked as Exhibit 37. Do you have  
10 that in front of you?  
11 A Yes.  
12 Q Have you seen this document before today?  
13 A Yes.  
14 Q What do you understand this document to be?  
15 A Replacing Dave Crabtree with myself.  
16 Q And does this document refresh your  
17 recollection that you were appointed the CEO of Earl of  
18 Sandwich (Atlantic City), LLC?  
19 A Okay. Yes.  
20 Q So it's correct and true -- well, correct and  
21 true is redundant, so it's true that you, as you sit  
22 here today, are the president, CEO and secretary of Earl  
23 of Sandwich (Atlantic City)?  
24 A Yes.  
25 Q You are also manager of Earl of Sandwich

Page 34

1 (Atlantic City), LLC?

2 **A Yes.**

3 Q Are there any other managers of Earl of

4 Sandwich (Atlantic City)?

5 **A Not that I'm aware of.**

6 Q Does Earl of Sandwich (Atlantic City) have

7 governing documents?

8 **A Yes.**

9 Q Do you know what those governing documents are

10 by title?

11 **A Operating agreement.**

12 Q And does the operating agreement set out the

13 authority granted to the corporate officers of Earl of

14 Sandwich (Atlantic City)?

15 **A Yes.**

16 Q Does that document also set out the authority

17 granted to the manager of Earl of Sandwich (Atlantic

18 City), LLC?

19 **A Yes.**

20 Q Are there any other documents that establish

21 or are there any other documents that govern the

22 operations of Earl of Sandwich (Atlantic), LLC [sic]?

23 **A No other documents.**

24 Q Are you familiar with an individual by the

25 name of Barrett Mikelberg or Mikelberg?

Page 35

1 **A Yes.**

2 **(Avallone Exhibit No. 57 was marked.)**

3 Q Mr. Avallone, do you have in front of you

4 what's been marked as [Exhibit 57](#)?

5 **A Yes.**

6 Q And this is a document bearing the Bates

7 number, which is little numbers at the bottom, Earl 251

8 through Earl 257?

9 **A Yes.**

10 Q So if you -- do you understand that when

11 e-mails print out, that what's first on the page is

12 actually the last e-mail in the thread?

13 **A Yes.**

14 Q So if you could turn to the page that has Earl

15 255 at the bottom, please.

16 **A Uh-huh.**

17 Q No. Actually, I'm sorry. If you could turn

18 to Earl 253. So about halfway, a little more than

19 halfway down the page is there an e-mail from you to

20 Mr. Mikelberg?

21 **A Yes.**

22 Q So on January 11th, you sent an e-mail to

23 Mr. Mikelberg stating that Earl of Sandwich (Atlantic

24 City) might be a seller of its 3.6 million undisputed

25 allowed claim for 2.15 million cash; is that correct?

Page 36

1 **A Yes.**

2 Q And did Mr. Mikelberg respond to that e-mail?

3 **A No.**

4 Q Did anyone respond to your January 11th e-mail

5 to Mr. Mikelberg?

6 **A Yes.**

7 Q Who responded?

8 **A Bradley Schwab.**

9 Q And at the time you received Mr. -- Mr. Schwab

10 responded to you on January 11th; is that correct?

11 **A Yes.**

12 Q And Mr. Schwab responded in writing; is that

13 correct?

14 **A Yes.**

15 Q And at the time you received Mr. Schwab's

16 written e-mail to you, did you know who he was?

17 **A No.**

18 Q You had no prior interactions with Mr. Schwab

19 before January 11, 2017; is that correct?

20 **A I don't think so.**

21 Q And Mr. Schwab's e-mail signature block says

22 that he's the head of Cowen Special Investments. Do you

23 see that?

24 **A Yes.**

25 Q Did you have any interactions with Cowen

Page 37

1 Special Investments prior to receiving Mr. Schwab's

2 e-mail on January 11th, 2017?

3 **A No.**

4 Q Had you heard of Cowen Special Investments

5 prior to receiving Mr. Schwab's e-mail on January 11th,

6 2017?

7 **A I'd heard of Cowen but not Cowen Special**

8 **Investments.**

9 Q The Cowen that you had been familiar with or

10 at least had heard of, did you believe that that was a

11 company related to Cowen Special Investments or did you

12 think it was something completely different?

13 **A No. The Cowen that I dealt with was the --**

14 **was the retail investment banking arm of the restaurant**

15 **division.**

16 Q So in his e-mail to you, Mr. Schwab asked you

17 a number of questions; is that correct?

18 **A Yes.**

19 Q And did you respond to those questions?

20 **A Yes.**

21 Q And this e-mail is printed in black and white.

22 If we looked at the original, you may have used colored

23 ink to differentiate your answers, but is it true that

24 you responded to Mr. Schwab's questions in what I call

25 in line, so in the body of his actual e-mail to you?

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1     **A Yes.**

2     Q And so that we're clear, Mr. Schwab in that

3 January 11, 2017, e-mail asked, "Was wondering if you

4 have support documentation regarding the claim being

5 allowed as you mention below. I do see that it was

6 filed for 3.6 million as well as 4.5 million."

7     What was your response to that question?

8     **MR. CHUBAK:** Objection. It's not a question.

9     **A (Reviewing document.) He was wondering**

10 **whether we had support documentation to support the 3.6**

11 **as well as the 4.5, and I was -- and I responded that it**

12 **was -- that the claim was originally at 4 point -- it**

13 **was disputed at 4.5 and that we agreed on, with the**

14 **debtor, a 3.6 million dollar claim.**

15     Q And the claim that you and Mr. Schwab were

16 discussing is a claim filed by Earl of Sandwich

17 (Atlantic City), LLC, in the Caesars bankruptcy; is that

18 correct?

19     **A That is correct.**

20     Q And that claim was filed and amended; is that

21 correct?

22     **A It was filed and amended, yes.**

23     Q And do you know that the amended claim number

24 is 5858?

25     **A Yes.**

Page 39

1     Q So Mr. Schwab goes on and asks you a few more

2 questions, including he'd like you to confirm that you

3 are offering the paper for sale at 2.15 million or

4 approximately 59.72 percent of the face claim amount, is

5 that correct," and "is that correct" is in his question.

6 Do you see that?

7     **A Yes.**

8     Q And how did you respond?

9     **A I responded question.**

10     Q And he also asked you if you would have any

11 flexibility. How did you respond?

12     **A No.**

13     Q And Mr. Schwab responded to you again in

14 writing, and he told you that he would have interest at

15 59.72 percent subject to confirming the above, and you

16 had asked for 59.72 percent; is that correct?

17     **A We were discussing -- the price was -- 59.72**

18 **percent calculates out to be the 2.15 million, and that**

19 **was one aspect of the negotiation.**

20     Q And Mr. Schwab asked you or stated -- let me

21 strike that.

22     Mr. Schwab stated -- actually, Mr. Schwab

23 asked you if you have support documentation confirming

24 that Earl Enterprises had settled a claim with the

25 estate. Do you see that?

Page 40

1     **A Yes.**

2     Q And you didn't tell Mr. Schwab that Earl

3 Enterprises wasn't a legal entity, did you?

4     **A No.**

5     Q And you didn't tell him that the party that

6 had settled the claim with the estate was anything other

7 than Earl Enterprises; is that correct?

8     **A Correct.**

9     Q And so for purposes of negotiating a potential

10 sale of Claim 5858, it wasn't important to you to

11 clarify which legal entity had settled the claim; is

12 that correct?

13     **A I wouldn't say it wasn't important. It**

14 **wasn't -- it wasn't pertinent to the negotiations.**

15     Q Why wasn't it pertinent?

16     **A Well, I mean, you know, in looking at it, I**

17 **mean, price is one thing, but there's also other**

18 **variables that I have to con -- had to consider. The**

19 **actual terms and conditions --**

20     Q That's not my question. My question was

21 solely about Earl Enterprises and the difference between

22 Earl Enterprises and Earl of Sandwich and what entity

23 you held yourself out as representing in any

24 communications with Mr. Schwab.

25     So you tell him in response to his asking for

Page 41

1 support documentation that you can easily get a letter

2 from the debtor or restructuring officer confirming the

3 nature of the claim, correct?

4     **A Yes.**

5     Q Okay. And, again, on the same day Mr. Schwab

6 then says -- no. He lists a number of conditions for

7 the benefit of the seller. Do you see that?

8     **A Yes.**

9     Q And he says that if you're good with those

10 terms, he'll move forward -- or sorry. He says that if

11 you're good with those terms, he'll forward you a

12 purchase and sale agreement for review; is that correct?

13     **A Yes.**

14     Q And at some point after receiving that e-mail,

15 did you have a phone conversation with Mr. Schwab?

16     **A Yes.**

17     Q And when did that conversation occur?

18     **A I don't recall exactly, but I would have**

19 **assumed it was sometime later on the 11th.**

20     Q And what did Mr. Schwab -- did you ask

21 Mr. Schwab to call you or did he reach out to you on his

22 own?

23     **A I don't recall.**

24     Q And what did Mr. Schwab say to you?

25     **A I don't recall exactly, but I do recall**

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1 stating that, as part of discussions, that as part of  
2 any transaction, that I need to be comfortable,  
3 obviously, with the terms and conditions, which includes  
4 the price, needed to get the approval from the owner and  
5 how it affected me as a member of the unsecured  
6 creditors committee.  
7 Q Where did you -- and you said that all on the  
8 phone?  
9 A Yes.  
10 Q And how do you recall that you said that  
11 specifically when you don't recall anything that  
12 Mr. Schwab said to you?  
13 A Because whenever I spoke to -- in my  
14 discussions with any of the people who called me or I  
15 spoke to about the claim, I made that statement because  
16 I wanted to be transparent and let them know that, you  
17 know, I'm on the unsecured creditors committee. I need  
18 other approvals. You know, that this isn't going to be  
19 a quick thing. I need to review everything, and I need  
20 to see how it sits on, you know, being on the unsecured  
21 creditors committee with my access to, you know, certain  
22 confidential information as relating to the bankruptcy.  
23 I just wanted to make sure we -- I was very up front  
24 with them and transparent.  
25 Q Why didn't you put that in writing?

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1 A I didn't see a need to.  
2 Q And is it not your practice that when you're  
3 negotiating to make sure that proposed terms and  
4 conditions are in writing?  
5 A That's the purpose of the purchase and sale  
6 agreement.  
7 Q And did you send anybody at Cowen a purchase  
8 and sale agreement that listed those conditions?  
9 A No.  
10 Q And did you make any effort to reach out to  
11 the creditors committee to find out how a potential sale  
12 would impact your rights and responsibilities on the  
13 creditors committee?  
14 A Yes.  
15 Q What steps did you take?  
16 A I spoke to creditors committee counsel.  
17 Q When did those conversations occur?  
18 A I don't recall.  
19 Q Do you believe that they occurred at about the  
20 time you were negotiating with Cowen in January of 2017?  
21 A Probably sometime after that.  
22 Q What does that mean to you, sometime after  
23 that? What length of time?  
24 A Maybe early February.  
25 Q Would it surprise you that those documents

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1 have not been produced in this action?  
2 A No.  
3 MS. LEWIS-GRUSS: So we're going to state that  
4 all such documents need to be produced and we are  
5 going to continue this deposition because we can't  
6 do that without those documents because the record  
7 is incomplete. So we suggest that you find a way  
8 to produce them to us at lunch; and if not, we're  
9 coming back.  
10 THE WITNESS: There is no documents.  
11 BY MS. LEWIS-GRUSS:  
12 Q You just said that you had e-mails.  
13 A No. I had a conversation, I said.  
14 Q No, that's not what you said, but we can go  
15 back.  
16 A Okay.  
17 Q So before you had e-mails, but now that you  
18 found out we're going to have to continue your  
19 deposition --  
20 A No.  
21 Q -- you're telling me under oath that such  
22 communications only occurred by phone?  
23 A Yes.  
24 Q Okay. So did you understand that at the  
25 time -- so why did you wait till February to reach out

Page 45

1 to the creditors committee counsel as opposed to in  
2 January when you were actually actively negotiating with  
3 Cowen?  
4 A Because in -- I was negotiating with Cowen,  
5 but at the time I did not -- had no intent that I  
6 actually had a deal going. We were just talking about  
7 it. And when I looked at the -- the purchase and sale  
8 agreement, the assignment agreement they sent me, there  
9 was items in there that I didn't like. And because of  
10 that, I didn't --  
11 Q So were you negotiating in bad faith with  
12 Cowen Special Investments?  
13 A No.  
14 (Whereupon, Douglas S. Mintz, Esq., enters the  
15 deposition room.)  
16 Q So you told them that you would have these  
17 conditions, but you took no steps to actually make sure  
18 that you complied or made those conditions come to  
19 fruition; is that correct?  
20 A No.  
21 Q But you were negotiating in January and it  
22 wasn't until February that --  
23 A Well, there was --  
24 Q -- you took any steps?  
25 A No, that's -- I received a purchase and sale

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1 agreement. Didn't like the terms. There was other  
2 considerations having to do with me being on the  
3 committee. And as you can see by the e-mail that there  
4 was -- after that there was no discussions or anything  
5 else. The negotiations ended.  
6 Q So once you received the purchase and sale  
7 agreement from Cowen, did you inform them that the deal  
8 was off and that you would not be pursuing any further?  
9 A There was never a deal to have. It was  
10 negotiations. The negotiations ended.  
11 Q Did you ever tell Cowen that you would not be  
12 pursuing the negotiations further?  
13 A I didn't need to because I said if I don't  
14 hear from you, we're going to assume you're no longer  
15 interested, so that's how it ended.  
16 MS. LEWIS-GRUSS: Let's take a break.  
17 THE WITNESS: Okay.  
18 THE VIDEOGRAPHER: Going off the record. The  
19 time is 10:37 a.m.  
20 (A 14-minute recess was had.)  
21 THE VIDEOGRAPHER: Please stand by. Going  
22 back on the record. The time is 10:51 a.m.  
23 BY MS. LEWIS-GRUSS:  
24 Q So you testified before the break,  
25 Mr. Avallone, that at the time you were negotiating with

Page 47

1 Cowen, you had no intent to actually have a deal going;  
2 is that true?  
3 A No. What I said was I had no intent to sell  
4 it at that time. I was the -- at the time we were just  
5 negotiating. It was not a -- in my mind, it was not a  
6 sale by any means.  
7 Q So did you inform Cowen that you were just in  
8 negotiation -- negotiating and did not have the intent  
9 to complete a sale in January of 2017?  
10 A I think the e-mails speak for themselves that  
11 we were negotiating back and forth various conditions  
12 and that we needed to have, you know, a signed document.  
13 I was hoping we could get to a signed agreement that I  
14 could -- in terms that were acceptable to me that I  
15 could present to Robert to get his approval to proceed  
16 or not, for him to make the decision.  
17 Q But it's your testimony as you sit here today  
18 that you, as the corporate representative of Earl of  
19 Sandwich (Atlantic City), LLC, had no intent to close a  
20 deal with Cowen in January 2017 when you were  
21 negotiating with representatives with Cowen for the sale  
22 of what has been referred to as Claim 5858, correct?  
23 MR. CHUBAK: Objection, misstates testimony.  
24 A No. I had no intent on January 11th that the  
25 sale was going -- if all the conditions that I just --

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1 and if the documents were in order and if I got Robert  
2 Earl's approval and if it didn't affect my standing on  
3 the unsecured creditors committee, then I would have  
4 been in a position to bring it to Robert, get his  
5 approval and then do a deal.  
6 Q And if you look back at what's been marked as  
7 Exhibit 57, Mr. Schwab, at 8:34 on January 12th, sends  
8 you an e-mail saying that his acceptance of your offer  
9 is good through 11:00 a.m. Eastern time that day. Do  
10 you see that?  
11 A Yes.  
12 Q And in response to that e-mail, you didn't say  
13 to Mr. Schwab, "I need more time to obtain approvals."  
14 You said, "Please forward draft document," correct?  
15 A Yes, because I wanted to move the process  
16 along, and documents are the most important aspect of a  
17 transaction of this nature.  
18 Q And in Mr. Schwab's January 12th e-mail to  
19 you, he said, "There are numerous other parties seeking  
20 to close transactions prior to the January 17th  
21 deadline." Do you see that?  
22 A Yes.  
23 Q And you didn't in response to Mr. Schwab say,  
24 "We will not be able to close this deal prior to January  
25 17 because I need more time to obtain approvals," did

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1 you?  
2 A No.  
3 Q And at the time you sent your e-mail on  
4 January 12th, 2017, at 9:46 in the morning, you didn't  
5 indicate to Mr. Schwab that there were any conditions to  
6 closing; isn't that correct?  
7 A By saying send me a draft document, I think  
8 that speaks for itself. There was no final document,  
9 that there were negotiations to continue --  
10 Q My question called for yes or no. Did you  
11 indicate in your e-mail to Mr. Schwab that there were  
12 other conditions to closing that would need to be  
13 completed?  
14 A I think the word "draft" answers that  
15 question.  
16 Q So the answer is, no, you didn't actually say  
17 anything other than please forward draft document,  
18 correct?  
19 MR. CHUBAK: Objection, asked and answered.  
20 A Correct.  
21 Q And did you receive a draft document from  
22 Mr. Schwab?  
23 A I received a draft document. I don't recall  
24 who from.  
25 Q If we could go back to Exhibit 57 for a

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1 moment, please. Mr. Schwab in his e-mail to you of 8:34  
 2 a.m., January 12th, said that the offer was good through  
 3 11:00 a.m. Eastern time today, correct?  
 4 **A Yes.**  
 5 Q And you responded prior to 11:00 a.m. Eastern  
 6 time on January 12th, correct?  
 7 **A Not to that question.**  
 8 Q You responded to his e-mail prior to 11:00  
 9 a.m. Eastern time on January 12th; is that correct?  
 10 **A I responded to his e-mail.**  
 11 Q And what question did you say you didn't  
 12 respond to? What I stated to you doesn't involve a  
 13 question; isn't that true?  
 14 **A He was saying acceptance of the offer is good**  
 15 **until 11:00 a.m. I sent a note to send a draft, not**  
 16 **a -- I did not agree to --**  
 17 Q Mr. Schwab had said to you the offer --  
 18 acceptance of the offer is good through 11:00 and that  
 19 he could forward a draft. Your response sent prior to  
 20 11:00 a.m. Eastern time on January 12th was to forward a  
 21 draft, correct?  
 22 **A Yes.**  
 23 **(Avallone Exhibit No. 58 was marked.)**  
 24 Q Mr. Avallone, you've now been handed what has  
 25 been marked as Exhibit 58. It's a document that was

Page 51

1 produced by your counsel bearing the Bates Nos. Earl 315  
 2 to Earl 325. Do you see that?  
 3 **A Yes.**  
 4 Q Is this the e-mail that you received from  
 5 Cowen Special Investments forwarding you the draft  
 6 document that you requested?  
 7 **A Yes.**  
 8 Q And at the time that you received this  
 9 document, you had agreed with Cowen Special Investments  
 10 on a price for a potential -- what you would call a  
 11 potential sale of the claim?  
 12 **A Yes.**  
 13 Q And, in fact, Cowen Special Investments  
 14 accepted the price you asked for. There was no discount  
 15 from your original request for 2.15 million dollars,  
 16 correct?  
 17 **A There was a request when he asked for**  
 18 **flexibility, and I said no.**  
 19 Q And he then accepted your price; is that  
 20 correct?  
 21 **MR. CHUBAK:** Objection, calls for a legal  
 22 conclusion.  
 23 **A Part of the negotiations, one aspect of it,**  
 24 **yes.**  
 25 Q So my question was specifically about price.

Page 52

1 He accepted your price; is that correct?  
 2 **A Yes.**  
 3 Q So on January 12th, you received an e-mail  
 4 from Gail Rosenblum. Who do you understand Gail  
 5 Rosenblum to be?  
 6 **A She was a -- a representative accountant.**  
 7 Q And she sent you a draft document; is that  
 8 correct?  
 9 **A Yes.**  
 10 Q And did you forward the draft document to  
 11 Mr. Earl?  
 12 **A No.**  
 13 Q Did you forward the draft document to legal  
 14 counsel?  
 15 **A No.**  
 16 Q Did you forward the draft document to anyone?  
 17 **A No.**  
 18 Q Did you review the draft document?  
 19 **A Yes.**  
 20 Q Did you inform Cowen of any concerns you had  
 21 about the draft document?  
 22 **A No.**  
 23 Q Did you send a black line requesting changes  
 24 to the draft document?  
 25 **A No.**

Page 53

1 Q Did you inform Cowen at the time you received  
 2 Ms. Rosenblum's e-mail in the afternoon of January 12th  
 3 that you were displeased with the draft agreement?  
 4 **A No.**  
 5 Q Did you inform Cowen that you had reviewed the  
 6 draft document and would not be proceeding with the deal  
 7 for the sale of Claim 5858?  
 8 **MR. CHUBAK:** Objection, compound question.  
 9 **A Could you repeat the question?**  
 10 Q So at the time that you received the draft  
 11 contract from Ms. Rosenblum on the afternoon of January  
 12 12th, 2017, did you inform Cowen that you would not  
 13 proceed with any deal to sell Claim 5858?  
 14 **A The negotiations weren't going to continue. I**  
 15 **did not inform Cowen.**  
 16 Q Did you have a conversation with Ms. Rosenblum  
 17 by phone after she forwarded this document to you?  
 18 **A Yes.**  
 19 Q When did that call occur?  
 20 **A I do not recall.**  
 21 Q Do you have reason to believe that that call  
 22 occurred in January of 2017?  
 23 **A Yes.**  
 24 Q Do you believe that it occurred soon after you  
 25 received the e-mail from Ms. Rosenblum on January 12th?

Page 54

1 A Yes.

2 Q Did you call Ms. Rosenblum?

3 A I don't recall.

4 Q What did you say to Ms. Rosenblum during that

5 phone call?

6 A I said about the claim and about what was

7 needed, the approval of the documents. I needed to

8 speak to -- get approval from the owner of the business,

9 and I had to see what -- how it affected me and the

10 creditors committee.

11 Q What steps did you take to obtain approval of

12 the document?

13 A I read the document.

14 Q So you have authority to approve the document

15 on your own?

16 A No.

17 Q So, again, what steps did you take to obtain

18 approval of the document?

19 A I did my own review, and if I had found it

20 satisfactory, I would have passed it on to the legal

21 department because it -- I was expecting a one-page

22 assignment to look at, and I got a seven- or eight-page

23 document that had all these conditions, that had

24 indemnities and reps and warranties --

25 Q So, in fact --

Page 55

1 A -- and it didn't even guarantee.

2 Q So, in fact, you did nothing to obtain

3 approval of the documents; isn't that correct?

4 A Yeah. It was at that point that the

5 transaction just got more complicated than I was

6 expecting.

7 Q So, again, you did nothing to obtain approval

8 of the document; isn't that correct?

9 MR. CHUBAK: Objection, asked and answered.

10 A Correct.

11 Q Did you inform Ms. Rosenblum that you had

12 expected to receive a one-page document?

13 A No.

14 Q Why not?

15 A Because, again, this was all part of

16 negotiations and not a deal, that this was -- this was

17 not something that was expecting to happen very quickly,

18 and they wanted it to happen quickly because of -- they

19 were mentioning because of the claim deadlines and

20 things of that nature, that I wasn't -- didn't want --

21 wasn't prepared to negotiate any further.

22 Q Did you inform Ms. Rosenblum during your

23 conversation that you were not prepared to meet the

24 January 17th deadline?

25 A I don't recall.

Page 56

1 Q What did you do to familiarize yourself with

2 the deposition topics prepared for today?

3 A I'm sorry. Could you repeat that?

4 Q So you're under obligation to testify on

5 behalf of the company regarding deposition topics set

6 out in the notice --

7 A Yes.

8 Q -- of deposition.

9 A Uh-huh.

10 Q So for you to say you don't recall is somewhat

11 surprising given that you were obligated to prepare for

12 this deposition.

13 What did you -- so I'm going to ask you again,

14 you know, as you sit here today, what did Ms. Rosenblum

15 tell you during your conversation with her in January of

16 2017?

17 MR. CHUBAK: Objection, asked and answered.

18 You're asking about a phone call.

19 A I don't recall.

20 MS. LEWIS-GRUSS: Mr. Chubak, I'm going to ask

21 my questions.

22 A I don't recall.

23 Q Do you take notes of your phone calls?

24 A No.

25 Q When you have a phone call regarding potential

Page 57

1 sale of a claim for 2.15 million dollars, do you report

2 that phone call to Mr. Earl?

3 A No.

4 Q Why not?

5 A Because it's common practice that I would get

6 all the information together and put it in final form

7 that would include negotiation of all the documents,

8 price, pluses, any other contingencies, and I put

9 together a full package to discuss with him to get

10 his -- to make a recommendation for him to make a

11 decision.

12 Q And you have authority to engage in

13 negotiations with third-parties on behalf of Earl

14 Enterprises; isn't that correct?

15 A Yes.

16 (Avallone [Exhibit No. 59](#) was marked.)

17 Q Mr. Avallone, do you have in front of you

18 what's been marked as [Exhibit 59](#)?

19 A Yes.

20 Q And this a document that was produced by your

21 counsel bearing the Bates stamps Earl 104 through Earl

22 115?

23 A Yes.

24 Q And it says in the middle of the page or -- in

25 the middle of the page, there's an e-mail from

Page 58

1 Ms. Rosenblum to you sent at approximately 9:00 a.m. on  
2 January 13th, 2017. Do you see that?  
3 A Yes.  
4 Q And Ms. Rosenblum states, "It appears I missed  
5 a call from you last night." Do you see that?  
6 A Yes.  
7 Q Do you have any reason to dispute that you  
8 called Ms. Rosenblum?  
9 A No.  
10 Q And at the top of this page is an e-mail from  
11 Ms. Rosenblum on January 16th, 2017. Do you see that?  
12 A Yes, sir.  
13 Q And by this e-mail Ms. Rosenblum again  
14 forwards you the draft document; is that correct?  
15 A (Reviewing document.) Yeah, based on the  
16 header, it looks like there was an attachment attached  
17 to it, yes.  
18 Q If you turn the page, can you see if there's  
19 an attachment to this e-mail, please?  
20 A Yes.  
21 Q And do you have any reason to believe that the  
22 draft Ms. Rosenblum sent you on January 16th is  
23 different than the e-mail she sent you on January 12th?  
24 A No. I didn't review it.  
25 Q And would it surprise you to receive an e-mail

Page 59

1 from Ms. Rosenblum that didn't reflect the conditions  
2 that you mentioned to her on your phone call sometime in  
3 the range of January 12th to January 14th of 2017?  
4 A No.  
5 Q Why not?  
6 A Because I wouldn't expect the agreement to  
7 have those conditions in there. That would be something  
8 that would take care of itself when I was -- they were  
9 my conditions that, you know, if things were acceptable,  
10 would be silent.  
11 Q So is it -- so let's go back. Do you now  
12 having looked at this e-mail believe that you had a  
13 phone conversation with Ms. Rosenblum sometime between  
14 January 12th and January 16th, 2017?  
15 A I don't recall.  
16 Q So when Ms. Rosenblum said, "I wanted to  
17 follow up on our call late Friday," do you think that  
18 you did not, in fact, have a call with Ms. Rosenblum on  
19 Friday?  
20 A No. Okay. All right. There's no reason to  
21 believe that we didn't have a call.  
22 Q And I'll represent to you that January 16th,  
23 the date of her e-mail, was a Monday. January 16th,  
24 2017 was a Monday, and so January 14th -- so the Friday  
25 would have been probably January 13th, so we're going to

Page 60

1 refer to your call as occurring on or about January  
2 13th. Okay?  
3 A Yes.  
4 Q Thank you. So it's your testimony on behalf  
5 of Earl of Sandwich (Atlantic City) that on January  
6 13th, you told Ms. Rosenblum that the deal would not  
7 proceed until you had received certain approvals,  
8 correct?  
9 A On this call or another call. I don't --  
10 Q You believe you had more than one call with  
11 Ms. Rosenblum?  
12 A I don't recall.  
13 Q So is there a reason -- do you believe that  
14 the call that occurred on or about January 13th was the  
15 first call you had with Ms. Rosenblum prior -- or after  
16 she had sent you the draft agreement?  
17 A (Reviewing document.) I really don't recall  
18 when -- the dates of calls or the time I don't recall.  
19 Q So before -- but you did speak to  
20 Ms. Rosenblum before she --  
21 A Yes.  
22 Q -- sent you the draft agreement on January  
23 16th?  
24 A Yes.  
25 Q And despite the fact that you had told her

Page 61

1 that you had certain conditions precedent to closing the  
2 deal, she did not include those conditions in the draft  
3 agreement she sent you on January 16th; isn't that  
4 correct?  
5 A Correct.  
6 Q But those conditions, in your mind, didn't  
7 need to be included in the draft because they were only  
8 things for you to worry about; is that true?  
9 A No. Those are things that would be settled  
10 before I will be in a position to be able to sign it.  
11 Q And does this draft agreement contain any  
12 conditions precedent to closing for any party on -- on  
13 behalf of any party?  
14 MR. CHUBAK: Objection. The document speaks  
15 for itself.  
16 A This is not a document that I would have  
17 signed.  
18 Q That's not my question to you.  
19 A Okay.  
20 Q So why would an agreement only protect one  
21 side -- one party and not both?  
22 A Don't understand the question.  
23 Q Is it your testimony that the draft document  
24 doesn't contain any conditions precedent to closing?  
25 MR. CHUBAK: Objection. The document speaks

Page 62

1 for itself.

2 **A I'd have to -- give me a minute to read the**

3 **document, and I'll let you know if there's anything in**

4 **it.**

5 Q But at the time that you reviewed this

6 document in January of 2017, did you understand there to

7 be any conditions precedent to closing as reflected in

8 the document?

9 **A I'll have to read the document and let you**

10 **know.**

11 Q I'm not asking you about what it says today.

12 I'm asking about your understanding in January of 2017.

13 **A It's my understanding in January that this**

14 **document had to be negotiated heavily.**

15 Q What was that understanding based off of?

16 **A My initial review of the document.**

17 Q But it was not based off of anything that you

18 communicated to Cowen; isn't that correct?

19 **A No. I hadn't -- hadn't -- hadn't proceeded**

20 **that far.**

21 Q But you had conversations with Cowen, that's

22 correct, isn't it?

23 **A As part of the negotiations, yes.**

24 Q And Cowen in its communications with you

25 stated that it had certain things that it needed to

Page 63

1 finalize; isn't that true? That the agreement was

2 subject to due diligence; isn't that true?

3 **A Correct.**

4 Q And Cowen had every right to waive those

5 conditions; isn't it true?

6 **MR. CHUBAK:** Objection, calls for a legal

7 conclusion.

8 Q Mr. Avallone, you're a sophisticated

9 businessman, aren't you?

10 **A In certain areas.**

11 Q You have an MBA, don't you?

12 **A I do.**

13 Q You regularly negotiate transactions; isn't

14 that true?

15 **A Yes.**

16 Q And you review contracts all the time in

17 connection with your responsibilities to negotiate

18 transactions on behalf of companies owned and controlled

19 by Robert Earl; isn't that true?

20 **A I review contracts, but I also send everything**

21 **to our legal department before.**

22 Q But you would make it -- you review them on

23 your own, as you've just testified?

24 **A Yes.**

25 Q So upon receiving this e-mail from

Page 64

1 Ms. Rosenblum on January 16th, what did you do?

2 **A I don't believe I did anything.**

3 Q And you didn't contact Ms. Rosenblum in

4 response to this e-mail; is that correct?

5 **A I don't recall.**

6 Q You didn't send her an e-mail saying "trying

7 to get those approvals that I told you about," did you?

8 **A I wasn't in a position to ask for the**

9 **approvals yet.**

10 Q Why weren't you in a position to ask for the

11 approvals yet?

12 **A Because I didn't have an agreement. I didn't**

13 **have the complete terms and understanding of what was**

14 **going to be considered as part of the sale, what we were**

15 **receiving, and as far as timing.**

16 Q So you received from Cowen Special Investments

17 a ten-page draft agreement. What terms remained to be

18 completed in that agreement?

19 **A Well, I would not have signed this agreement.**

20 **I didn't like the indemnities. I didn't like the fact**

21 **that -- with some of the reps and warranties. I didn't**

22 **do any, you know, haven't done any specific -- I hadn't**

23 **done any research about holding on it, whether there was**

24 **any claims against it and everything was free and clear.**

25 **I didn't like the idea that they could pay late and not**

Page 65

1 **pay me at closing and just pay an 8 percent interest**

2 **rate on it.**

3 **There was certain things about this. It was**

4 **complex and it -- to me it was something that wasn't in**

5 **a position that I could give to Mr. Earl with confidence**

6 **and say here's the deal.**

7 Q So the fact that you didn't like the terms

8 proposed by Cowen didn't mean that the terms weren't

9 complete, correct?

10 **A It means I wouldn't have signed a deal with**

11 **them under these terms.**

12 Q That's not the question. What you testified

13 earlier was that the terms hadn't been completed. In

14 fact, the terms had been completed. You just decided

15 that you didn't like them; isn't that correct?

16 **MR. CHUBAK:** Objection, asked and answered and

17 calls for a legal conclusion.

18 **MS. LEWIS-GRUSS:** His decision is not calling

19 for a legal conclusion. He's already testified

20 he's not a lawyer. Mr. Chubak, I'm going to

21 continue to ask the questions I want to ask. I

22 suggest that you not make objections unless they

23 have foundation.

24 **A Could you repeat the question?**

25 **MS. LEWIS-GRUSS:** Could you please read back

Page 66

1 the question?

2 (The record was read back as requested.)

3 **A No, the terms hadn't been completed.**

4 Q What -- again, what terms hadn't been

5 completed?

6 **A Timing of payments, the amount of the**

7 **contingencies, the reps and warranties.**

8 Q How did you memorialize your concerns with the

9 terms in this agreement?

10 **A I didn't.**

11 Q And you didn't convey those concerns to Cowen;

12 isn't that correct?

13 **A As part of the negotiations, no, I did not.**

14 Q And it's your testimony that when you received

15 this specific draft on January 16th, there were no

16 further negotiations; isn't that correct?

17 **A Correct.**

18 Q And in response to receiving this draft, you

19 didn't tell Ms. Rosenblum or anyone else at Cowen

20 Special Investments that you needed to obtain the

21 approval of Robert Earl; isn't that correct?

22 **A I don't believe that's correct.**

23 Q You don't believe it's correct?

24 **A No. I had told them about the approval of**

25 **Mr. Earl at some point.**

Page 67

1 Q But you -- do you have reason to believe that

2 that happened after you received the e-mail that you

3 have in front of you that's been marked as [Exhibit 59](#)?

4 **A I don't recall when.**

5 Q So as you sit here today, when do you believe

6 the negotiations with Cowen came to a conclusion?

7 **A I think from probably sometime after this or**

8 **right around this time and got confirmation from Gail**

9 **that said "If I don't hear from you, I'm going to assume**

10 **you're no longer interested," and I didn't respond.**

11 Q And when did that occur?

12 **A I don't recall exactly the date.**

13 Q And did there come a time when Cowen informed

14 you that you did have a deal?

15 **A Yes.**

16 Q And what form did that communication take

17 place or in what form did that communication come?

18 **A I believe I got a letter from someone at**

19 **Cowen.**

20 **MS. LEWIS-GRUSS:** Let's mark this, please.

21 (Avallone [Exhibit No. 60](#) was marked.)

22 **BY MS. LEWIS-GRUSS:**

23 Q So after Ms. Rosenblum -- do you have in front

24 of you what's been marked as [Exhibit 60](#)?

25 **A Yes.**

Page 68

1 Q And that document bears the Bates Nos. Earl 61

2 through Earl 72. Do you see that?

3 **A 61 to when?**

4 **THE REPORTER: 72.**

5 **A Yes.**

6 Q And by this e-mail, Ms. Rosenblum again sends

7 you the draft document; isn't that correct?

8 **A Yes.**

9 Q And Ms. Rosenblum in her e-mail says there's

10 additional time for your review of the document. Do you

11 see that?

12 **A Yes.**

13 Q And she doesn't say in this e-mail, you know,

14 that you only have until a certain date to accept; isn't

15 that correct?

16 **A Yes.**

17 Q And she doesn't say "If I don't hear back from

18 you, we'll consider the deal as lost," does she?

19 **A Not in this e-mail.**

20 Q And as you sit here today, you don't know the

21 date of the e-mail that you believe exists in which

22 Ms. Rosenblum said you have until a certain time to

23 accept?

24 **A It was a week or so after this.**

25 Q Okay. Well, I'm going to ask your counsel to

Page 69

1 find that because I don't believe any such e-mail was

2 produced to us.

3 In this e-mail, Ms. Rosenblum says that she

4 left a message with Lori on January 17th, 2017. Do you

5 see that?

6 **A Yes.**

7 Q Who's Lori?

8 **A Lori's my assistant.**

9 Q Did you speak to Ms. Rosenblum on January 17th

10 after receiving her e-mail?

11 **A I don't recall.**

12 **MR. CHUBAK:** The referenced e-mail was January

13 18th, 9:33 a.m. It's included in the transcript

14 claim.

15 Q So that's not a week later, is it? January

16 18th wouldn't be a week later, would it?

17 **A It's somewhere around there. It's sometime**

18 **after that, within the week.**

19 Q So Ms. Rosenblum sends you this e-mail on

20 January 17th with the draft document. That draft

21 document does not, in fact, say -- I mean, that draft

22 document does not reference the conditions that you had

23 allegedly conveyed to Ms. Rosenblum; isn't that correct?

24 **A Correct. But she does say working with our**

25 **counterparts and negotiate a mutually agreeable**

Page 70

1 agreement, so it --  
2 Q And what --  
3 A -- could easily have applied to conditions  
4 that needed to be there.  
5 Q And what steps did you take to mutually  
6 negotiate those terms?  
7 A None.  
8 Q And did you inform Ms. Rosenblum that you  
9 would not be taking any steps to mutually negotiate  
10 those terms?  
11 A No, because in my mind, the negotiations --  
12 wasn't negotiating anymore.  
13 Q And did you convey what was in your mind to  
14 anyone at Cowen Special Investments?  
15 A Nope.  
16 Q And in the course of your business  
17 negotiations, is that how you normally conclude  
18 transactions?  
19 MR. CHUBAK: Objection, vague.  
20 A It's not a transaction. This was a  
21 negotiation.  
22 Q Do you normally conclude negotiations in the  
23 course of your business dealings in which -- by just  
24 walking away?  
25 A Sometimes.

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1 Q In what situations do you conclude  
2 negotiations by walking away without informing your  
3 counter party that you're no longer interested in  
4 continuing negotiations?  
5 A It's just not at that particular -- usually  
6 we'll come back if there was a period of just -- a  
7 waiting period. I wasn't rushing forward on it and at  
8 some point just stopped negotiating.  
9 Q So is it your testimony that you -- that in  
10 your mind, the negotiations concluded -- the  
11 negotiations with Cowen concluded or is it that you were  
12 taking your time to consider the terms proposed in the  
13 draft agreement?  
14 MR. CHUBAK: Objection, asked and answered.  
15 A No. What I'm saying is that I did not have to  
16 because in the e-mail that I'm referring to later, which  
17 counsel has told me is the 18th now, which she says, you  
18 know, if I don't hear from you I'm assuming we're not  
19 doing business anymore, that's how it concluded.  
20 Q So what did you mean when you said there was a  
21 waiting period in your answer to my last question?  
22 A Well, I'm just saying nothing happened between  
23 when I received the first draft and January 17th.  
24 Q Why did you believe there was a waiting period  
25 between the time you received the first draft on January

Page 72

1 12th and January 17th?  
2 A Again, this was not a transaction in my mind  
3 that, you know, something was being sold and we had to  
4 get the documents done very quickly. This was a  
5 negotiation, and if it wasn't going to take place today,  
6 you know, we had time to complete this.  
7 Q But Cowen --  
8 A Cowen was the one who were saying that there  
9 was -- they were under some time pressure.  
10 Q Right. So, in fact, Cowen told you you didn't  
11 have a waiting period, that you needed to move quickly  
12 on this deal, correct?  
13 A They believed that, yes.  
14 Q And you continued to negotiate with them  
15 understanding that they believed the deal needed to  
16 conclude on or about January 16th or 17th, even though  
17 you knew there was no way for you to obtain the  
18 approvals within that time period; is that correct?  
19 A That is correct.  
20 Q So the waiting period that you just testified  
21 under oath existed only existed in your mind; is that  
22 correct?  
23 A It was a period -- yeah.  
24 Q Did you -- after Ms. Rosenblum sent you the  
25 document, did you speak to anybody at Cowen Special

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1 Investments other than Ms. Rosenblum?  
2 A After when?  
3 Q After Ms. Rosenblum began e-mailing you, did  
4 you speak to anybody else at Cowen Special  
5 Investments --  
6 A Don't --  
7 Q -- besides Ms. Rosenblum?  
8 A Don't recall.  
9 Q Do you know -- and if you look at this e-mail,  
10 there is somebody named John Mori copied on that e-mail.  
11 Do you know who that is?  
12 THE REPORTER: John what?  
13 MS. LEWIS-GRUSS: Mori, M-O-R-I.  
14 A No.  
15 Q Did you have any communications with Mr. Mori?  
16 A Not that I'm aware of.  
17 (Avallone [Exhibit No. 61](#) was marked.)  
18 Q Mr. Avallone, you've been handed what's been  
19 marked as [Exhibit 61](#), which is an e-mail bearing the  
20 Bates stamps Earl 258 to Earl 261. Do you see that?  
21 A Yes.  
22 Q And at the bottom of this page is the January  
23 18th e-mail that your attorney testified to; is that  
24 correct?  
25 MR. CHUBAK: I'm not under deposition, just

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1 for the record.

2 MS. LEWIS-GRUSS: But you are providing

3 testimony, apparently, on the record.

4 BY MS. LEWIS-GRUSS:

5 Q So at the bottom of this page, is there an

6 e-mail that you received from Ms. Rosenblum on January

7 18th, 2017?

8 A Yes.

9 Q And this is an e-mail which Ms. Rosenblum

10 said, "Would you kindly advise by noon Eastern time

11 today if you plan to move ahead with the transaction";

12 is that correct?

13 A Yes.

14 Q And you didn't respond to this e-mail; is that

15 correct?

16 A Yes.

17 Q And despite having said that to you on January

18 18th, Ms. Rosenblum actually contacts you again on

19 January 24th and says that there's more time and that

20 you could still consider the transaction; isn't that

21 correct?

22 A Yes.

23 Q And did you respond to Ms. Rosenblum's January

24 24th e-mail at any time prior to the conclusion of

25 January 2017?

Page 75

1 A I don't believe so.

2 Q And why not?

3 A Because she's already said on January 18th

4 that, you know, negotiations are ended and no longer --

5 that I was no longer interested, so we confirmed that we

6 were no longer negotiating. And I took this e-mail on

7 the 24th to mean, "Hey, good news. You're not under

8 time pressure. If you want to come back and talk to us,

9 we can start negotiations again."

10 Q And so what does that mean that you took this

11 e-mail to mean, "Hey, good news you're not under time

12 pressure, if you want to come back, we can start

13 negotiations again," what does that mean to you?

14 A She said, "We have been in touch with the

15 claims agent and an attorney, and although the plan was

16 confirmed, it's not yet effective, and the agent is

17 still transferring Caesars's claims. The attorney

18 stated this typically takes a while for the effective

19 date conditions in the plan to be satisfied. Should you

20 wish to speak further regarding the sale of the claim, I

21 hope you will contact Brad or me." So I took that to

22 mean that there was more time and we could start up

23 negotiations again.

24 Q And did you take any steps to start up

25 negotiations again?

Page 76

1 A No.

2 Q Did you speak to Mr. Earl and advise him that

3 you had received an offer?

4 A No.

5 Q So when you -- so is it your testimony that

6 you decided not to move forward with the negotiations

7 for the sale of Claim 5858 when you received

8 Ms. Rosenblum's e-mail on January 18th, 2017?

9 A I'm sorry. Could you repeat that?

10 Q Is it your testimony that the date on which

11 you decided not to move forward with the negotiations

12 for the sale of Claim 5858 was January 18th, 2017, the

13 date on which you received Ms. Rosenblum's e-mail?

14 A I think that was where it was finally

15 concluded.

16 Q So up until that point, it's your testimony

17 the negotiations were ongoing?

18 MR. CHUBAK: Objection, asked and answered.

19 A Yeah. There was little, if any, activity from

20 the date I received the first assignment.

21 Q And that's because you chose not to take any

22 steps to obtain the approvals that you claim were

23 necessary for closing this transaction; isn't that

24 correct?

25 MR. CHUBAK: Objection, misstates testimony.

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1 A It was -- there was nothing to dis -- the

2 negotiations -- nothing further happened. There were no

3 further negotiations at that point.

4 Q So when Brad Schwab agreed to your price term

5 of 2.15 million dollars on January 12th, 2017, did you

6 convey that information to Mr. Earl?

7 A No, I did not.

8 Q Why not?

9 A Because it wasn't a -- it wasn't a

10 transaction -- wasn't in a position where I would take

11 it to Mr. Earl because there's more involved than just

12 the price. There's --

13 Q So you don't -- so Mr. Earl would not have

14 been interested in learning that somebody had offered

15 you 2.15 million dollars to purchase Claim 5858?

16 A He might have been interested.

17 Q And it's not your job responsibility to keep

18 Mr. Earl informed of offers to purchase assets of Earl

19 of Sandwich?

20 A No, that's something that I would normally do.

21 Q And yet you didn't do that in this case; isn't

22 that correct?

23 A I would keep Mr. Earl informed of the prices

24 from time to time, and if there was -- after I had

25 gotten information. I believe I did tell Mr. Earl that,

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1 you know, we're being offered in the neighborhood of 2.2  
2 million or 2.1 million, something like that, at some  
3 point in time.  
4 Q So when I asked you so when Brad Schwab agreed  
5 to your price term of 2.15 million dollars on January  
6 12th, 2017, did you convey that information to Mr. Earl,  
7 you said, no, I did not, are you changing that  
8 testimony?  
9 A No, I did not. At the time I did not.  
10 Q But --  
11 A What I -- what I said was the 2.15 million to  
12 Brad was a number that I think that subject to getting  
13 everything else done and a signed document -- and a  
14 document ready for signature that I could bring it to  
15 Mr. Earl and get his approval to do the transaction.  
16 His approval, I should say, or get his decision on  
17 whether or not he wants to do the transaction.  
18 Q And you said that to Brad? Is that what --  
19 A No, no.  
20 Q -- you're testifying to?  
21 A I'm just saying -- you asked me about the 2.1  
22 million and what happened. I just said that I would be  
23 in a position after the whole document's complete to go  
24 to Mr. Earl and get a decision.  
25 Q So you were authorized to negotiate the

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1 complete terms of this agreement prior to obtaining  
2 Mr. Earl's approval?  
3 MR. CHUBAK: Objection, misstates testimony.  
4 A Typically, I would get a transaction to a  
5 stage where it would be ready for signature or at least  
6 terms that I would be happy with. And once I was happy  
7 with all of the terms and conditions and all the  
8 consequences of the deal, I would bring the full package  
9 to Mr. Earl to get his approval before I proceed.  
10 Q So you would engage Cowen's time and resources  
11 negotiating with you without having any idea whether the  
12 ultimate terms might be acceptable to Mr. Earl; is that  
13 your testimony?  
14 MR. CHUBAK: Objection, mischaracterizes.  
15 A I would wait till the deal is -- is -- I would  
16 wait till a transaction is further -- far enough along  
17 before I brought it to Mr. Earl because it makes no  
18 sense to bring him a transaction that was incomplete.  
19 Q What were the material terms of this  
20 transaction to you, in your mind?  
21 A Price, contingencies, payment terms, how it  
22 affected the standing on the unsecured committee.  
23 Q And when did you convey to Cowen that the  
24 payment terms were material to you?  
25 A I didn't, but I expected it to be in a -- in a

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1 negotiated purchase and sale agreement.  
2 Q Did you convey that expectation to Cowen?  
3 A No.  
4 Q And when did you convey to Cowen that there  
5 were certain contingencies that were material to you?  
6 MR. CHUBAK: Objection, asked and answered.  
7 A I didn't. The transaction hadn't progressed  
8 far enough to -- to even consider putting certain of  
9 those terms in there.  
10 Q And when did you convey to Cowen -- strike  
11 that.  
12 But you had agreed with Cowen on the material  
13 term of price; isn't that correct?  
14 A Price only. I thought that was a number that  
15 I could present to Robert that he would actually -- he  
16 would consider.  
17 Q But you didn't actually present that number to  
18 Robert --  
19 A Nope.  
20 Q -- in January of 2017?  
21 A Nope.  
22 THE VIDEOGRAPHER: Ms. Lewis-Gruss, we have  
23 about five minutes on this disk.  
24 MS. LEWIS-GRUSS: We can switch it now. That  
25 is fine.

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1 THE VIDEOGRAPHER: This concludes Disk No. 1  
2 in the deposition of Thomas Avallone. The time is  
3 11:38 a.m. We are off the record.  
4 (A 5-minute recess was had.)  
5 THE VIDEOGRAPHER: This is the beginning of  
6 Disk No. 2 in the deposition of Thomas Avallone.  
7 The time is 11:43 a.m. We are on the record.  
8 BY MS. LEWIS-GRUSS:  
9 Q So is it your testimony that at some point in  
10 January 2017 you told Cowen that you required the  
11 approval of Mr. Earl before completing this transaction?  
12 A Yes.  
13 MR. CHUBAK: Objection, asked and answered.  
14 Q Did you tell Cowen that you would not take any  
15 steps to obtain the approval of Mr. Earl during January  
16 2017?  
17 A No. It was -- the negotiations weren't that  
18 far along to where I thought it was appropriate to bring  
19 to Mr. Earl.  
20 Q My question was not about whether you thought  
21 it was appropriate. My question was whether you  
22 informed Cowen that you had not brought the transaction  
23 to Mr. Earl. So in January 2017, did you inform Cowen  
24 that you had not brought the transaction to Mr. Earl?  
25 A No.

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1 Q And in 2017, is it -- did you tell Cowen that  
2 the deal could not go forward until you had discussed  
3 the draft agreement with legal counsel?  
4 A **Could you repeat that?**  
5 Q In 2017 -- in January 2017, did you tell Cowen  
6 the deal could not go forward until you had discussed  
7 and obtained the approval of Earl of Sandwich (Atlantic  
8 City)'s legal counsel?  
9 A **The negotiations wouldn't continue. I didn't**  
10 **tell Cowen that I didn't send the documents to the legal**  
11 **department.**  
12 Q Thank you. I think you were trying to answer  
13 my next question, which I appreciate, but my question is  
14 did you tell Cowen that legal counsel's approval was  
15 required of any deal?  
16 A **No.**  
17 Q And you also, as you just testified, didn't  
18 tell Cowen that you had not brought the draft agreement  
19 or any subject of the negotiations to Earl of Sandwich's  
20 legal counsel; is that correct?  
21 A **Yes.**  
22 Q And is it correct that in January 2017 -- at  
23 some point in January 2017 you told representatives of  
24 Cowen that you needed to determine how this proposed  
25 transaction would affect Earl of Sandwich's standing on

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1 the unsecured creditors committee before you agreed to  
2 enter into -- or you agreed to sign the draft agreement?  
3 A **Could you repeat that, please?**  
4 Q So as you sit here today, is it your testimony  
5 that at some point in January 2017 you told  
6 representatives of Cowen Special Investments that you  
7 needed to obtain more information from the unsecured  
8 creditors committee regarding how this deal would impact  
9 Earl of Sandwich's standing on that committee before you  
10 could proceed?  
11 A **Before I -- before any -- before I would be in**  
12 **a position to sell any claim, I needed to understand how**  
13 **selling the claim would affect my standing on the**  
14 **unsecured creditors committee.**  
15 Q And did you tell Cowen that?  
16 A **Yes.**  
17 Q And did you tell Cowen that you would not be  
18 taking any steps to determine how selling the claim  
19 would affect your standing on the unsecured creditors  
20 committee?  
21 A **Not as part of the negotiations at that time.**  
22 Q Did you tell them that as part of any other  
23 communication?  
24 A **No.**  
25 Q We started to talk about this a little bit

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1 earlier, but at some point you received an e-mail from  
2 a Mr. -- or a note from a Mr. Seyfried?  
3 A **Yes.**  
4 Q Do you know when that happened?  
5 A **I'm not sure of the timing. Sometime before**  
6 **the 28th of February.**  
7 Q And you know that because you sent a response  
8 on February 28th; is that correct?  
9 A **Yes, correct.**  
10 Q And that response is set out in what's been  
11 previously marked as [Exhibit 61](#)?  
12 A **Yes.**  
13 **(Avallone Exhibit No. 62 was marked.)**  
14 Q Mr. Avallone, you've been handed what's been  
15 marked as [Exhibit 62](#). Do you have that in front of you?  
16 A **Yes.**  
17 Q I represent to you that this document was  
18 filed with the court, which is why it has a header on  
19 the top that states a file date. Do you see that?  
20 A **Yes.**  
21 Q And when you received this document from  
22 Mr. Seyfried, it didn't have that header, I would  
23 assume; is that correct?  
24 A **Correct.**  
25 Q I will represent to you that this document was

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1 not found in the production made by your counsel in this  
2 action --  
3 A **Correct.**  
4 Q -- so we do not have a copy. I was making a  
5 representation, but are you -- were you aware that this  
6 document was not in the production of Earl of Sandwich?  
7 A **Yes.**  
8 Q And how are you aware of that fact?  
9 A **Because I was looking for the document and I**  
10 **couldn't find it.**  
11 Q And how did you receive this document?  
12 A **I believe it was by mail.**  
13 Q And it does have your e-mail address listed on  
14 it as well. Do you see that?  
15 A **Yes.**  
16 Q So do you believe you didn't receive it by  
17 e-mail?  
18 A **I don't believe I received it by e-mail.**  
19 Q And are you aware of the record retention  
20 policy of your company?  
21 A **Yes.**  
22 Q And with regard to hard copy documents on hard  
23 copy correspondence, for what length of time are you  
24 required to maintain a record?  
25 A **It depends on the record, but anywhere from**

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1     **three to five years.**  
 2         Q   And so you did have a duty to maintain a hard  
 3     copy of this document if you, in fact, received it in  
 4     hard copy form, correct?  
 5         A   **I would have liked to have kept a copy of it.**  
 6         Q   But you did search your files for it --  
 7         A   **Yes.**  
 8         Q   -- and you didn't find it? At the time you  
 9     received this letter, did you contact your legal  
 10    department?  
 11        A   **I believe I did.**  
 12        Q   And solely for the purposes of identifying  
 13    where this document might be in the records of Earl of  
 14    Sandwich, do you believe you provided a copy of this  
 15    document to legal counsel by e-mail?  
 16        A   **I did not.**  
 17        Q   And do you know for a fact that you did not  
 18    provide a copy by e-mail?  
 19        A   **Yes.**  
 20        Q   Do you believe you provided legal counsel with  
 21    a hard copy?  
 22        A   **I actually think the general counsel at the**  
 23    **time came into my office and we discussed it.**  
 24        Q   Who was the general counsel at the time?  
 25        A   **Martha McIntosh.**

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1         Q   Do you believe you gave the original of the  
 2     document to Ms. McIntosh?  
 3         A   **No.**  
 4         Q   And why do you not believe that happened?  
 5         A   **Because I think we just discussed it briefly,**  
 6     **and I wrote my response to Gail.**  
 7         Q   And that response is what is set out in  
 8     [Exhibit 61](#) at the top of the page?  
 9         A   **Yes.**  
 10        Q   And why did you respond to Gail rather than  
 11    Mr. Seyfried?  
 12        A   **Because I didn't know Mr. Seyfried and I had**  
 13    **been communicating earlier with Gail, and I wanted to**  
 14    **show Gail that, you know, look at the correspondence. I**  
 15    **never thought we had a deal. I never agreed to any kind**  
 16    **of deal. We were in negotiations. Negotiations ended.**  
 17    **Look, your own document said we're finished. Why are**  
 18    **you telling me that there's a deal now.**  
 19        Q   And in your e-mail to Gail sent on February  
 20    20 -- February 28th, you said, "I always stated that any  
 21    sale would require approval from the owner of the  
 22    business"; is that correct?  
 23        A   **Yes.**  
 24        Q   But you did not say that you had also stated  
 25    that it would require you to do research as to how a

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1     sale of Claim 5858 would impact Earl of Sandwich's  
 2     standing on the unsecured creditors committee; is that  
 3     correct?  
 4         A   **No. I thought the e-mail -- her e-mail to me**  
 5     **saying that the deal's over unless I hear from you was**  
 6     **sort of enough, and I just wanted to emphasize the fact**  
 7     **was -- plus, I needed approval from Robert. I could**  
 8     **have also added we never had a signed document, we never**  
 9     **negotiated agreements, we never got the approval in, but**  
 10    **I didn't add that. I thought it was self-explanatory,**  
 11    **the e-mails.**  
 12         Q   So, again, when you responded -- so when  
 13    you -- so you sent an e-mail to Ms. Rosenblum on  
 14    February 28th that was intended to respond to a letter  
 15    you had received from Mr. Seyfried on February 22nd,  
 16    correct?  
 17         A   **I'm sorry. Could you -- could you repeat**  
 18    **that?**  
 19         Q   You received a -- you received the document  
 20    that's been marked as [Exhibit 62](#) --  
 21         A   **Right.**  
 22         Q   -- by mail from Mr. Seyfried sometime after he  
 23    sent it to you on February 22nd, 2017?  
 24         A   **Yes.**  
 25         Q   In response to receiving that letter, you sent

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1     an e-mail to Ms. Rosenblum on February 28th, 2017?  
 2         A   **Correct.**  
 3         Q   In that e-mail to Ms. Rosenblum, the only  
 4     condition to closing that you specifically stated was  
 5     that you had always told her that any sale would require  
 6     approval -- would require approval from the owner of the  
 7     business, correct? It's a yes or no question.  
 8         A   **Well, not if you ask it that way.**  
 9         Q   There are words on this page. Are the words  
 10    on this page written by you, "Dear Gail, I received a  
 11    note from Bryan Seyfried alleging that we had a deal to  
 12    sell our claim. Please note that it is not true, as  
 13    indicated by your e-mail below. I always stated that  
 14    any sale would require approval from the owner of the  
 15    business. Regards, Tom."  
 16         A   **Yes.**  
 17         Q   That e-mail does not say "I always stated that  
 18    any sale would require approval or further understanding  
 19    of how any sale would impact Earl of Sandwich's standing  
 20    on the unsecured creditors committee." Yes or no?  
 21         A   **Correct.**  
 22         Q   That -- your February 28th, 2017, e-mail does  
 23    not state that any deal was subject to further  
 24    negotiation regarding the payment terms, correct?  
 25         A   **We never had a deal.**

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1 Q That's not my question. I'm asking you a very  
2 specific question regarding the text of this e-mail.  
3 This e-mail does not state that you had previously told  
4 Ms. Rosenblum or anyone else at Cowen that any deal was  
5 subject to further negotiation regarding the payment  
6 terms, correct?  
7 A Correct.  
8 Q And this e-mail does not state that you had  
9 always told Cowen that any sale of Claim 5858 was  
10 subject to further negotiations over the contingencies?  
11 A We never had a deal. It was negotiations  
12 that -- if you take out the word "deal" and you put in  
13 the word "negotiations," I think the answer is yes.  
14 Q So using your terminology, this e-mail does  
15 not state that you had always told Cowen that finalizing  
16 your negotiations for any sale of Claim 5858 was subject  
17 to further negotiations over the contingencies?  
18 A Yes.  
19 Q What were those contingencies?  
20 A Getting a signed -- a mutually agreeable  
21 signed purchase and sale agreement, getting approval  
22 from Mr. Earl, and getting understanding what the  
23 ramifications of the sale of the claim would be to me  
24 on -- as a member of the unsecured creditors committee.  
25 Q And on February 28th, 2017, when you

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1 informed -- when you sent this e-mail to Ms. Rosenblum,  
2 you did not inform her that you had taken no steps to  
3 complete those stated contingencies; is that correct?  
4 A By her own e-mails, the negotiations had --  
5 were already -- had ended.  
6 Q On February 28th, 2017, when you sent an  
7 e-mail to Ms. Rosenblum, did you state in that e-mail  
8 that you had taken no steps to complete the  
9 contingencies that you identified?  
10 A Correct.  
11 Q So at any point after receiving Mr. Seyfried's  
12 letter, did you discuss this dispute with Mr. Earl?  
13 A After -- probably sometime in April or May.  
14 Q So it's not your practice upon receiving a  
15 letter from a third-party saying "we had a deal" that  
16 you would bring that to Mr. Earl's attention?  
17 A No, because it was very obvious from Gail's  
18 own admission that we didn't have a deal. We had  
19 negotiations. Negotiations ended. And I never received  
20 this response from Gail, so I assume that she took my  
21 note and I didn't know there was an issue until probably  
22 sometime in May and June, when after speaking to another  
23 potential buyer of the claim that there was a company  
24 called Whitebox that was alleging some kind of interest  
25 in it.

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1 Q So that was nonresponsive, but I appreciate  
2 you providing me with more context. Again, you receive  
3 a letter from Mr. Seyfried. This letter was  
4 insufficient to notify -- in February of 20 -- sometime  
5 after February 22nd, 2017. This letter was insufficient  
6 to notify you that there was a dispute?  
7 A I thought it was cleared up.  
8 Q Why did you believe it was cleared up?  
9 A Because I sent the note to Gail spelling it  
10 all out, and I did not receive a response disputing what  
11 I told her.  
12 Q And you didn't have further involvement of  
13 legal counsel?  
14 A Nope.  
15 Q And it is -- is it traditional that when you  
16 would receive something -- well, how would you  
17 characterize the February 22nd, 2017, letter?  
18 A A letter from somebody in Cowen requesting  
19 some information that got cleared up when I sent the  
20 note to Gail saying that this is wrong, you know,  
21 explain to this person that there's -- that we never had  
22 a deal.  
23 Q Would you consider this to be notice of a  
24 dispute -- this February 22nd, 2017, letter to be notice  
25 of a dispute?

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1 A I guess it's a dispute.  
2 Q And so it's not your practice to notify Mr.  
3 Earl when you're advised of a dispute?  
4 A Not -- not one that I thought was resolved.  
5 Q And you have authority to attempt to resolve  
6 disputes; is that correct?  
7 A Yes.  
8 Q And it's not your practice to have legal  
9 counsel handle responses to notices of potential or  
10 actual disputes; isn't that correct?  
11 A No, that's not true.  
12 Q So is it your practice to have legal counsel  
13 handle responses to notices of potential or actual  
14 disputes?  
15 A When it's a significant dispute or one that --  
16 a serious dispute, one that I think that could cause --  
17 cause damage. Like I said, this is -- you know, I  
18 thought this was over and done with, you know, by virtue  
19 of the e-mails. We never had a deal. There was  
20 negotiations. Negotiations ended. And, you know, Gail  
21 by her own admission says, "We never had a deal and  
22 would you like to continue to speak on terms? Would you  
23 like to move forward?" And so it was -- there was no  
24 dispute.  
25 Q Please identify where Ms. Avallone -- where

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1 Ms. Rosenblum says "We never had a deal."  
 2 A "Should you wish to speak further regarding  
 3 the sale, I hope you will contact us. If I don't hear  
 4 from you, I'm going to assume you don't want to proceed  
 5 forward."  
 6 Q So that the record's clear, could you identify  
 7 the exhibit number and the date and time of the e-mails  
 8 to which you're referring to?  
 9 A Okay. The January -- [Exhibit 61](#), the January  
 10 24th memo, third paragraph, "Should you wish to speak  
 11 further regarding the sale of the Earl of Sandwich  
 12 claim, I hope you will contact Brad or me."  
 13 On the January 18th memo, again, this is the  
 14 second paragraph, "Would you kindly advise by noon  
 15 Eastern time if you plan to move ahead with this  
 16 transaction? We will assume you are no longer  
 17 interested."  
 18 On the January 17th e-mail, in the third  
 19 paragraph where it says, "We initially anticipated that  
 20 confirmation would prevent us from proceeding. However,  
 21 we are able to move forward to complete a transaction as  
 22 we're no longer under a tight deadline. There's  
 23 additional time to look at the documents."  
 24 On the January 12th e-mail, she says to follow  
 25 up, a chance to review the agreements.

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1 Q So your testimony earlier was that  
 2 Ms. Rosenblum said "We never had a deal." Ms. Rosenblum  
 3 never actually used the words "we never had a deal";  
 4 isn't that true?  
 5 A Not in those words.  
 6 Q And Ms. Rosenblum never informed you that you  
 7 had not reached agreement or that -- Ms. Rosenblum never  
 8 stated to you that Cowen believed it had not reached  
 9 agreement on all material terms relevant to the sale of  
 10 Claim 5858; isn't that true?  
 11 A You had too many negatives in there. Could  
 12 you repeat that, please?  
 13 Q Did Ms. Rosenblum ever tell you that Cowen  
 14 believed it had not reached an agreement with you  
 15 concerning the material terms for the sale of Claim  
 16 5858?  
 17 A No, she did not.  
 18 Q So you send this e-mail off February 28th.  
 19 You hear nothing further from Cowen; is that correct?  
 20 A Yes.  
 21 Q Okay. Did you take any further steps  
 22 regarding this claim in March of 2017?  
 23 A With regard to this claim?  
 24 Q Yes.  
 25 A With regard to -- in what respects?

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1 Q Did you take any steps in March 2017 to make  
 2 sure that there was no further dispute between Cowen and  
 3 Earl regarding Claim 5858?  
 4 A No, because I thought it was over. I had  
 5 never received any response from Gail.  
 6 Q You testified earlier that in February 2017  
 7 you advised Mr. Earl that you had received an offer for  
 8 2.15 million dollars for the purchase of Claim 5858.  
 9 Who was that offer from?  
 10 A It's probably this offer, I would imagine --  
 11 Q But --  
 12 A -- from a valuation standpoint.  
 13 Q What does that mean?  
 14 A Well, I think, you know, from time to time I  
 15 would send Robert notes after speaking to various people  
 16 who were looking to buy the claim, what they were  
 17 offering verse, you know, what they were offering, that  
 18 I would get an indication of what the recovery  
 19 percentages were, and I would relay that information to  
 20 Mr. Earl.  
 21 Q So Mr. Earl was interested in understanding  
 22 what the recovery percentages were in February of 2017?  
 23 A He was always interested in what the recovery  
 24 was going to be.  
 25 Q And so he would want to know if you received

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1 an actual offer for the sale of the claim; isn't that  
 2 true?  
 3 MR. CHUBAK: Objection, vague, and asked and  
 4 answered.  
 5 A If it was an offer that was -- that -- if  
 6 there was an offer that was out there and finished, I  
 7 would have presented it to him.  
 8 Q But he wouldn't be interested in knowing you  
 9 had received an offer just from a valuation standpoint?  
 10 A He would.  
 11 Q But you made the decision not to tell him  
 12 about this offer in January of 2017. Isn't that your  
 13 testimony?  
 14 A Yes.  
 15 Q So if the deal had concluded on or about  
 16 January 18th when Ms. Rosenblum sent you an e-mail  
 17 saying you have until a specific time to respond or  
 18 we'll consider the deal done, why did you inform Mr.  
 19 Earl in February about the terms of this deal? Did  
 20 you --  
 21 A Again, in January of 2018, this was a price  
 22 that was established.  
 23 Q And you meant January 2017 in your answer, not  
 24 January 2018.  
 25 A I did, right.

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1 Q So -- but you inform -- did you inform Mr.  
 2 Earl in February of 2017 that you had received an offer  
 3 to purchase the claim for 2.15 million dollars?  
 4 A I would have told Mr. Earl that in -- that  
 5 we -- that the value of the claim was in the  
 6 neighborhood -- was worth in the neighborhood of 2.2  
 7 million dollars.  
 8 Q Did you believe that Cowen's offer to purchase  
 9 the claim for 2.15 million dollars was still good in  
 10 February of 2017?  
 11 A I assumed that if I went back to them and  
 12 started negotiations again, they would talk to me. I  
 13 know when I told Robert the number he wasn't interested,  
 14 in February. When I did give him the amount, he wasn't  
 15 interested in doing anything at that level.  
 16 Q But the deal had already fallen apart by that  
 17 point in time; isn't that your testimony?  
 18 A The negotiations had fallen apart, yes.  
 19 MS. LEWIS-GRUSS: So it's 12:11. In the  
 20 interest of being able to come back on the record  
 21 for a little bit before you have to do your call, I  
 22 think it would be a good time to go to lunch.  
 23 MR. CHUBAK: Okay.  
 24 MS. LEWIS-GRUSS: And we can take that lunch  
 25 for 45 minutes. Is that enough time to get lunch?

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1 THE WITNESS: More than enough.  
 2 MR. CHUBAK: Sounds good.  
 3 THE VIDEOGRAPHER: Going off the record. The  
 4 time is 12:11 p.m.  
 5 (A 56-minute recess was had.)  
 6 THE VIDEOGRAPHER: Going back on the record.  
 7 The time is 1:07 p.m.  
 8 BY MS. LEWIS-GRUSS:  
 9 Q Good afternoon, Mr. Avallone. You testified  
 10 earlier that you had not heard that once you -- sorry.  
 11 You testified earlier that once you e-mailed  
 12 Ms. Rosenblum at the end February 2017, you considered  
 13 the dispute with Cowen to be resolved; is that correct?  
 14 A Yes.  
 15 Q And it wasn't until sometime later that you  
 16 were notified by a third-party that Whitebox was  
 17 asserting that it had purchased the claim from Cowen; is  
 18 that correct?  
 19 A Yes.  
 20 Q Do you recall who it was that told you  
 21 Whitebox was asserting a claim that it had purchased  
 22 Claim 5858 from Cowen?  
 23 A I believe that it was Alex Ortega, but he told  
 24 me that Whitebox said that they had an interest. He  
 25 didn't mention Cowen until -- until later or I found

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1 out, you know, until later. I think he just said  
 2 Whitebox said there was an interest in it.  
 3 Q And who is Mr. Ortega?  
 4 A He is -- he deals in trading claims. He  
 5 called me at one point asking me if I was willing to  
 6 sell the claim.  
 7 Q And do you know the date of -- the date on  
 8 which Mr. Ortega called and asked if you were interested  
 9 in trading the claim?  
 10 A No, I do not.  
 11 Q Do you believe it was in the spring of 2017?  
 12 A I don't recall.  
 13 Q Do you know whether you had conversations with  
 14 Mr. Ortega concerning the sale of the claim prior to  
 15 January of 2017?  
 16 A I believe I did.  
 17 Q And what makes you believe that you had  
 18 conversations with Mr. Ortega prior to January 2017?  
 19 A I recall discussing early on, probably late in  
 20 '16 or sometime in '16 having some -- a conversation  
 21 about the claim. And then just since I'm not  
 22 involved -- I don't know people in the claim industry or  
 23 people who trade claims of that nature. There was --  
 24 you know, he was a person who called me that I called  
 25 back, again, curious about valuation and, you know, and

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1 what, you know, what the claim was, would he be  
 2 interested in it.  
 3 Q And when Mr. Ortega contacted you, did you do  
 4 any research to determine if he was a legitimate buyer  
 5 of claims?  
 6 A No.  
 7 Q And at the time -- so do you believe that you  
 8 first spoke to Mr. Ortega in late 2016?  
 9 A I believe so.  
 10 Q And did you inform Mr. Ortega of a price at  
 11 which you would be willing to trade Claim 5858?  
 12 A I did not.  
 13 Q Did you inform Mr. Ortega that any sale of  
 14 Claim 5858 would be subject to Mr. Earl's approval?  
 15 A Yes.  
 16 Q What form did that communication take place?  
 17 A By phone.  
 18 Q Did you inform Mr. Ortega that any sale of  
 19 Claim 5858 would require you to determine how a sale  
 20 would affect Earl of Sandwich's standing on the  
 21 unsecured creditors committee?  
 22 A Yes.  
 23 Q And did you inform Mr. Ortega of any other  
 24 conditions that you would require before agreeing to  
 25 trade Claim 5858?

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1     **A   Have to agree to terms and conditions having**  
2     **to do with the sale.**  
3     Q   And did you ever put that in writing to  
4     Mr. Ortega?  
5     **A   No.**  
6     Q   In any negotiation you've been involved with,  
7     not limited to Claim 5858, have you ever put it in  
8     writing that any -- that in order to execute an  
9     agreement, you would first need to obtain the approval  
10    of Mr. Earl?  
11    **A   I'm sure I have. I can't give you a specific**  
12    **instance, though.**  
13        **(Avallone Exhibit No. 63 was marked.)**  
14    Q   So, Mr. Avallone, you've now been handed  
15    Exhibit 63, which bears the Bates stamps Earl 180 to  
16    Earl 182. Do you have that in front of you?  
17    **A   Yes.**  
18    Q   And is this a communication you had with  
19    Mr. Ortega in June of 2017?  
20    **A   (Reviewing document.) I'm sorry. What was**  
21    **the question? I just wanted to review the document**  
22    **first.**  
23    Q   So in this e-mail, is there a communication  
24    that you had with Mr. Ortega in June of 2017?  
25    **A   Yes.**

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1     Q   And if we could start at the back of the  
2     document, which is actually the earliest e-mail in the  
3     chain. Mr. Ortega reached out to you in May of 2017 and  
4     asked if Earl has an offer at which it would execute a  
5     sale. Do you see that?  
6     **A   Yes.**  
7     Q   And had you previously made an offer to  
8     Mr. Ortega at which Earl would execute a sale?  
9     **A   No.**  
10    Q   And why do -- do you know why Mr. Ortega seems  
11    to suggest that it would be Earl who would be making the  
12    offer?  
13    **A   No.**  
14    Q   And you respond to him a few weeks later on  
15    June 7th, 2017; is that correct?  
16    **A   Yes.**  
17    Q   And you -- what did you ask Mr. Ortega?  
18    **A   What is the current price for the claim, for**  
19    **the 3.6 million dollar claim, and how fast can we close**  
20    **if I accept.**  
21    Q   And were you interested in closing quickly at  
22    the time that you sent this e-mail in June -- on June  
23    7th, 2017?  
24    **A   I was curious about the timing.**  
25    Q   And why was that something that you were

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1     curious about?  
2     **A   Just curious. Just curiosity.**  
3     Q   And so did you believe that if Mr. Ortega said  
4     that you would be able to close a sale quickly, that you  
5     would have the necessary time to obtain all of the  
6     approvals that were required prior to you finalizing a  
7     sale?  
8     **A   Absolutely.**  
9     Q   And why did you believe that to be the case?  
10    **A   Because that's the only way I could do a deal.**  
11    Q   I'm sorry. I don't understand. So you had  
12    previously testified that it would take you a lengthy  
13    amount of time to obtain the approvals necessary to  
14    complete the deal you were negotiating with Cowen, but  
15    something -- did anything change between January of 2017  
16    and June of 2017 so that in June 2017 you could obtain  
17    those approvals quickly, if necessary?  
18    **A   It was all dependent upon how fast we could**  
19    **negotiate a purchase and sale agreement and get an**  
20    **approval from Mr. Earl.**  
21    Q   And so in January of 2017 when you were  
22    negotiating with Cowen, it would have been possible for  
23    you to quickly obtain approvals from Mr. Earl and to  
24    determine whether or not the sale would negatively  
25    impact Earl's standing on the unsecured creditors

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1     committee if you had wanted to move quickly; isn't that  
2     true?  
3     **A   If I was -- if we were able to negotiate a**  
4     **satisfactory agreement, yes.**  
5     Q   So, in fact, there was no reason that you  
6     couldn't have completed a deal if you had wanted to in  
7     January of 2017, at least with regard to timing?  
8     **MR. CHUBAK:** Objection, mischaracterizes  
9     testimony.  
10    **A   The negotiations -- we could have finalized**  
11    **negotiations and come to a deal quickly if we wanted to,**  
12    **yes.**  
13    Q   And so Mr. Ortega writes you back on June 7th,  
14    and then on June 9th, which is two days after you ask  
15    him for a price, you ask him for his final and best  
16    offer; is that correct?  
17    **A   Yes.**  
18    Q   And did Mr. Ortega provide you with a final  
19    and best offer?  
20    **A   I don't recall.**  
21    Q   Do you have reason to believe that he did?  
22    **MR. CHUBAK:** Objection, asked and answered.  
23    **A   I -- I don't recall.**  
24    Q   What terms would you expect Mr. Ortega to  
25    include if he had presented you with a final and best

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1 offer?

2 **A Well, that would have been the starting point.**

3 **If it was something that I felt was reasonable that I**

4 **could bring to Robert and I would be willing to bring to**

5 **Robert, that would start the process of getting the --**

6 **of negotiating a purchase and sale agreement and to**

7 **give -- to submit to Robert for his approval.**

8 Q Would the final and best offer include a price

9 term?

10 **A Yes.**

11 Q Would it include any other terms?

12 **A The terms would be spelled out in the purchase**

13 **and sale agreement.**

14 Q And that agreement is something you would

15 negotiate after receiving the final and best offer;

16 isn't that correct?

17 **A Yes.**

18 Q And prior to asking Mr. Ortega for his final

19 and best offer, did you inform him that any sale would

20 require the approval of Mr. Earl?

21 **A Yes.**

22 Q When did you inform Mr. Ortega of that?

23 **A It would have been either in my first**

24 **conversations with him, whenever that occurred. Like I**

25 **said, I believe it was sometime in '16.**

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1 Q And would that have been something you

2 reminded Mr. Ortega of when you spoke to him -- when you

3 communicated with him in June of 2017?

4 **A Yes.**

5 Q And how did you communicate -- by what form

6 did you communicate to Mr. Ortega in June of 2017 that

7 any sale would require Mr. Earl's approval?

8 **A It would have been by phone.**

9 Q And when did that phone call occur?

10 **A I do not recall.**

11 Q And how do you recall that you told Mr. Ortega

12 in June of 2017 that any sale would require Mr. Earl's

13 approval if you don't recall anything else about that

14 phone call?

15 **A Because it's something I mentioned to all the**

16 **claimants, again, in the effort to be -- for**

17 **transparency, that, you know, the unsecured committee**

18 **and these other issues were all out there, and Robert's**

19 **approval was important.**

20 Q So as you sit here today, do you have a

21 specific memory of telling Mr. Ortega in June 2017 that

22 any sale would require Mr. Earl's approval?

23 **A I don't have a specific number.**

24 Q And as you sit here today, do you have a

25 specific memory of telling Mr. Ortega in June of 2017

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1 that any sale would require you to first make sure that

2 the sale would not negatively impact Earl of Sandwich's

3 rights with regard to the unsecured creditors committee?

4 **A I'm not sure. I don't recall.**

5 Q Do you have a -- as you sit here today, do you

6 have a specific memory of telling Mr. Ortega in June of

7 2017 that there were any other conditionies [sic] or

8 necessary approvals required before you could complete a

9 sale of Claim 5858?

10 **MR. CHUBAK:** Objection. The document speaks

11 for itself.

12 **A Yeah, we'd have to have a mutual, agreeable**

13 **purchase and sale document.**

14 Q Is that something that you told Mr. Or -- that

15 you specifically recall telling Mr. Ortega in June 2017?

16 **A I believe it was understood.**

17 Q Why do you believe it was understood?

18 **A Because that's my understanding of how these**

19 **things operated. The purchase and sale agreement is**

20 **required to lay out the terms of a sale.**

21 Q So that's based on just how you norm -- your

22 understanding of how business is done. It's not based

23 on a specific conversation you had with Mr. Ortega; is

24 that correct?

25 **A Not that I recall.**

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1 Q And so in response to your June 9th e-mail

2 asking for a final and best offer, Mr. Ortega asks you a

3 day later "Were you by any chance able to speak to

4 Whitebox yesterday?" Do you see that?

5 **A Yes.**

6 Q And did you speak to Whitebox?

7 **A I don't recall.**

8 Q Do you recall ever having communications with

9 an attorney by the name of Cindy DeLano?

10 **A Vaguely, yes.**

11 Q And do you recall reaching out to anyone at

12 Whitebox prior to that call to ask them what was going

13 on with Whitebox's stated interest in the claim?

14 **A There was some conversations. I know I spoke**

15 **to Whitebox. I don't recall exactly when.**

16 Q And did you -- how did you know who to contact

17 at Whitebox?

18 **A I got a contact information. I'm not sure**

19 **from whom I got it from. I'm not sure where I got that.**

20 Q And so after you -- so -- so after you get

21 this e-mail from Mr. Ortega saying were you by any

22 chance able to speak to Whitebox, you write him back and

23 you say -- what did you say to Mr. Ortega at that time

24 on June 10th?

25 **A I said, "Yes, looks like there will be a**

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1 **fight. Don't understand how they think the claim was**  
 2 **assigned. We never agreed a price and I never got owner**  
 3 **approval."**  
 4 Q And you didn't say in that e-mail that "I told  
 5 Cowen I always needed owner approval"; isn't that true?  
 6 A **That's true.**  
 7 Q And you didn't say to Mr. Ortega, "I never  
 8 figured out how this claim would impact our standing on  
 9 the unsecured creditors committee"; isn't that true?  
 10 A **That is true.**  
 11 Q And you didn't tell Mr. Ortega that there were  
 12 any other terms, contingencies or conditions precedent  
 13 that had not been met other than you never agreed on a  
 14 price and you never got owner approval; isn't that  
 15 correct?  
 16 A **Yeah.**  
 17 Q And what did you mean when you said you never  
 18 agreed on a price?  
 19 A **I think it was the overall terms. Just**  
 20 **generally by "price," I meant overall terms. And,**  
 21 **again, this was -- from a timing standpoint, this was**  
 22 **six months after that. And based on my recollection of**  
 23 **all the memos back then, we never really agreed. We**  
 24 **were negotiating. We never really agreed on a final**  
 25 **format.**

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1 Q But you had actually agreed on a dollar amount  
 2 for the sale of the claim; isn't that true?  
 3 A **We said there was a dollar amount -- yeah, I**  
 4 **believe there was a dollar amount that I would -- if**  
 5 **everything else, all the other issues were resolved,**  
 6 **that I could bring to Robert, yes.**  
 7 Q And Mr. Ortega reaches out to you again on  
 8 June 16th. Do you see that?  
 9 A **Yes.**  
 10 Q And you responded that same day; is that  
 11 correct?  
 12 A **Yes.**  
 13 Q And you thanked him for bringing the issue to  
 14 your attention?  
 15 A **Yes.**  
 16 Q And you sent a demand letter to Cowen to make  
 17 them fix it?  
 18 A **Yes.**  
 19 Q And did you draft the demand letter to Cowen?  
 20 A **No.**  
 21 Q Who drafted that letter?  
 22 A **Our legal department.**  
 23 Q Did you consult with the legal department  
 24 concerning that letter?  
 25 A **Probably saw the copy of it the final form.**

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1 Q And did you tell your legal department that  
 2 you had informed Cowen that any sale was contingent on  
 3 approval by Mr. Earl?  
 4 **MR. CHUBAK:** Objection, privileged.  
 5 A **Yes.**  
 6 Q Did you -- when you spoke to Whitebox, did you  
 7 tell the representatives of Whitebox that you had  
 8 informed Cowen that any sale of Claim 5858 was  
 9 contingent on Mr. Earl's approval?  
 10 A **I don't recall.**  
 11 Q And when you spoke to Whitebox, did you tell  
 12 the representatives of Whitebox that you had informed  
 13 Cowen that any sale of Claim 5858 was contingent on a  
 14 resolution of the issues concerning the unsecured  
 15 creditors committee?  
 16 A **I don't recall.**  
 17 Q Did you -- when you spoke to Whitebox, did you  
 18 tell the representatives of Whitebox that you had not  
 19 reached agreement as to the price of the sale of Claim  
 20 5858?  
 21 A **I -- I don't recall the exact words, but I'm**  
 22 **sure I said that I never had an agreement with Cowen.**  
 23 **We never came to -- we never came to a deal. We were**  
 24 **still doing negotiations until they got broken off.**  
 25 Q And going back to your communications with

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1 Mr. Ortega, you never put it in writing to Mr. Ortega --  
 2 scratch that. You know what? Let's move on. I think  
 3 you've covered that question.  
 4 You testified earlier about sending an e-mail  
 5 to Barrett Mikelberg. When did you first communicate  
 6 with Mr. Mikelberg?  
 7 A **I don't recall. I'd have to look at --**  
 8 Q It's fine. I don't need an exact date. Do  
 9 you believe that you communicated with Mr. Mikelberg in  
 10 the fall of 2016?  
 11 A **I might have. I spoke to several parties that**  
 12 **deal -- dealt in trade claims, and they called me and I**  
 13 **called them back, again, curious. He might have been**  
 14 **one of those. I -- I don't recall exactly when the**  
 15 **first time was I spoke to him.**  
 16 Q Mr. Avallone, I'm handing you what's been  
 17 previously marked as Exhibit 26. Do you have that in  
 18 front of you?  
 19 A **Yes.**  
 20 Q And is this -- is it 25 or is it 26 that you  
 21 have in front of you?  
 22 A **26.**  
 23 Q And is this an e-mail exchange that you had  
 24 with Mr. Mikelberg in the fall of 2016?  
 25 A **Yes.**

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1 Q And Mr. Mikelberg was a claims broker. Is  
2 that a correct way to describe his role?  
3 A I know he bought claims.  
4 Q So he bought claims either in his personal or  
5 corporate capacity. That was your understanding?  
6 A He was in the business. I don't -- I don't  
7 know what his --  
8 Q And so he reached out to you in October of  
9 2016 and asked if you'd be interested in selling your  
10 Caesars claim; is that accurate?  
11 A Yes.  
12 Q And you responded and you said -- you asked  
13 him how much he would pay for your claim?  
14 A Yes.  
15 Q And did you inform Mr. Mikelberg that any sale  
16 of the claim would be subject to Mr. Earl's approval?  
17 A Yes.  
18 Q As you sit here today, do you have a specific  
19 memory of informing Mr. Mikelberg that any sale would be  
20 subject to Mr. Earl's approval?  
21 A In the ph -- any phone conversation I had with  
22 him and I've stated our position, I would have told him  
23 that selling of the claim required Mr. -- the owner's  
24 approval and especially at -- and how it affected the  
25 unsecured committee.

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1 Q And do you specifically recall telling him  
2 that or is your testimony based on the fact that you  
3 believe you would have told him that?  
4 A I told him that.  
5 Q And on what date did you tell him that?  
6 A I do not know.  
7 Q And you only told him that by phone; is that  
8 correct?  
9 A Yes.  
10 Q You never met with Mr. Mikelberg in person?  
11 A No.  
12 Q And you didn't tell Mr. Mikelberg that in  
13 e-mail -- you did not tell Mr. Mikelberg in any e-mails  
14 that any sale of Claim 5858 would have required Mr.  
15 Earl's approval and also an understanding of how the  
16 sale would affect the unsecured creditors committee; is  
17 that accurate?  
18 A Not in e-mail, no.  
19 Q And at some point you tell Mr. Mikelberg that  
20 you're going to take the settlement instead. That's on  
21 October 20th, 2016. Do you see that?  
22 A Yes.  
23 Q And did you inform Mr. Mikelberg that the  
24 reason you decided to take the settlement was because  
25 Mr. Earl had decided to take the settlement?

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1 A No.  
2 Q And did you inform Mr. Earl that you had  
3 received these communications from Mr. Mikelberg in  
4 October 2016 concerning Claim 5858?  
5 A I don't think I would have spoken to him about  
6 this specific claim other than to say I got an offer  
7 that was around 35, 40 cents a share, whatever number he  
8 mentioned.  
9 Q You would not have asked Mr. Earl in October  
10 2016 for his approval to sell the claim at that offer?  
11 A No, because I wouldn't have recommended it. I  
12 would have just informed him of the price.  
13 Q So as you sit here today, do you have a  
14 specific memory of telling Brad Schwab on or about  
15 January 11th or January 12th, 2017, that any sale of  
16 Claim 5858 would require Mr. Earl's approval?  
17 MR. CHUBAK: Objection, asked and answered.  
18 A Yes.  
19 Q And your memory is clear that that  
20 conversation happened on January 11th or January 12th,  
21 2017?  
22 A Yes.  
23 Q And how is your memory clear with regard to  
24 the date on which that conversation happened given your  
25 inability to remember anything else about that

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1 conversation?  
2 MR. CHUBAK: Objection.  
3 A Well, just based on e-mail correspondence and  
4 dates when talked about we had, you know, phone calls or  
5 discussions, that -- those dates appear correct.  
6 Q So you know you were communicating with  
7 Mr. Schwab in the period of January 11th and January  
8 12th, 2017; isn't that true?  
9 A Yes.  
10 Q But you know that you had a phone  
11 conversation -- and you know you had a phone  
12 conversation with him in that window. Is that your  
13 understanding?  
14 A Yes.  
15 Q Do you know if you had any other conversations  
16 with Mr. Schwab by phone on any other dates?  
17 A I'm not sure.  
18 Q But it's your testimony under oath that you  
19 specifically told Mr. Schwab on or about January 11th or  
20 January 12th, 2017, that any sale would require Mr.  
21 Earl's -- a sale of Claim 5858 would require Mr. Earl's  
22 approval?  
23 A I would have said owner's approval or my  
24 boss's approval, something like that.  
25 Q And that's just because you just know that you

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1 say that all the time when you were negotiating; isn't  
 2 that true?  
 3 A Yes.  
 4 Q But you don't actually know that you said it  
 5 to Mr. Schwab on or about January 11th or January 12th,  
 6 2017?  
 7 A No, I --  
 8 MR. CHUBAK: Objection, mischaracterizes his  
 9 testimony, asked and answered.  
 10 A Yeah, I told --  
 11 Q What else --  
 12 A -- Mr. Schwab.  
 13 Q What else did you tell Mr. Schwab on that  
 14 phone call?  
 15 A Again, I don't know the specifics, but we  
 16 would have discussed the timing. We would have -- we  
 17 would have discussed the possible, you know, when they  
 18 were merging and timing.  
 19 Q And what did Mr. Schwab say to you on  
 20 the con -- in the conversation you had with him on or  
 21 about January 11th or January 12th, 2017?  
 22 A I don't recall.  
 23 Q Do you recall anything that Mr. Schwab said to  
 24 you in that conversation?  
 25 A I didn't think it was relevant.

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1 Q And did you have -- as you sit here today, do  
 2 you have a specific memory of telling Ms. Rosenblum that  
 3 any sale of Claim 5858 could not be completed until you  
 4 had obtained Mr. Earl's approval?  
 5 MR. CHUBAK: Objection, asked and answered.  
 6 A Yes.  
 7 Q What are the circumstances of that  
 8 conversation? What do you remember about them?  
 9 A It would have been surrounding the -- her  
 10 sending me the agreement and me seeing what needed to be  
 11 done, what information I needed, and, again, how it  
 12 affected my relationship with the unsecured creditors  
 13 committee because that was very important.  
 14 Q And so you said one of the top things you  
 15 discussed is what information was needed. What  
 16 information did you tell Ms. Rosenblum you needed from  
 17 her regarding the sale of Claim 5858?  
 18 A A mutual -- mutually agreeable purchase and  
 19 sale agreement.  
 20 Q So that's a document, not information. Was  
 21 there any information that you required from  
 22 Ms. Rosenblum that you specifically recall asking her  
 23 for?  
 24 A No. But I think she asked me for some  
 25 information about the claims and whether -- and she was

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1 going to find out whether or not it was transferable or  
 2 not or were we inside a window, and there were some  
 3 things she was doing, and whether or not -- what was the  
 4 status of the claims and asked, you know, asked me  
 5 can -- you know, about just the validity of the claims  
 6 and what other information was available.  
 7 Q Do you recall what time of day that call took  
 8 place during? Do you recall what time of day that call  
 9 took place in?  
 10 A No.  
 11 Q Do you recall which date it occurred on?  
 12 A Not without looking or trying to find  
 13 documents.  
 14 Q Do you recall where you were when you had that  
 15 conversation with Ms. Rosenblum?  
 16 A Not -- no.  
 17 Q And do you recall where you were when you  
 18 spoke to Mr. Schwab on or about January 11th or January  
 19 12th, 2017?  
 20 A I can't say for certain.  
 21 Q Have you ever sold any other bankruptcy claim?  
 22 A I was -- never sold a claim, but there was a  
 23 claim that we had a couple of years ago from Kodak that  
 24 I know our chief financial officer and VP of finance had  
 25 gotten some indications of interest about buying the

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1 claim. And sitting here I can't tell you whether or not  
 2 it was actually sold or not. I actually did see a  
 3 document for selling a claim, but whether that was ever  
 4 negotiated or signed I don't -- I can't tell you.  
 5 Q And did you review that document so that you  
 6 could approve it? Did you review the document that you  
 7 mention with regard to the Kodak claim?  
 8 A I read the document. I didn't review it. I  
 9 did read it. And if it went any further, they would  
 10 have sent it back over to legal.  
 11 Q And you don't know whether it was sent to  
 12 legal?  
 13 A I don't know if we pursued it. I don't even  
 14 remember what the -- what the dollar amount was.  
 15 Q And were -- who is Earl Enterprises's CFO  
 16 currently?  
 17 A Earl Enterprises, again, isn't an entity, but  
 18 the CFO is Bruce Hawkins.  
 19 Q So you're the vice chairman of Earl  
 20 Enterprises, but Earl Enterprises is not an entity?  
 21 A There you go.  
 22 Q But are Earl Enter --  
 23 A He would refer to himself as the CFO of Earl  
 24 Enterprises to encompass the group (indicating), but his  
 25 official title is CFO of Planet Hollywood and most of

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1 these other entities as well. Makes for very long  
2 business cards.  
3 Q Was Mr. Hawkins -- did Mr. Hawkins have any  
4 involvement in considering whether or not to sell Claim  
5 5858?  
6 A No. He wasn't involved other than he  
7 actually -- some people had contacted him, and he  
8 forwarded maybe a couple of names or gave names or I  
9 told him to have so-and-so call me or whatever about the  
10 claim.  
11 Q And who is the VP of finance of Planet  
12 Hollywood International?  
13 A Yeah, Richard Olgee.  
14 Q And that's O-L-G-E-E?  
15 A Yes.  
16 Q And was Mr. Olgee involved in --  
17 A No, not at all.  
18 Q Can I ask my question just so the record's  
19 clear?  
20 A Certainly.  
21 Q Was Mr. Olgee involved in any discussions  
22 concerning the sale of Claim 5858?  
23 A No.  
24 Q Was anyone -- who would you say were the  
25 people at Planet Hollywood International who were

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1 involved in the decision of whether to sell Claim 5858?  
2 A It would only be myself to sort of gather the  
3 information and get all the terms right and then Mr.  
4 Earl to make the ultimate decision.  
5 Q Have you ever purchased a bankruptcy claim?  
6 A Never.  
7 Q Have you ever dealt with outside advisors  
8 concerning potential purchases or sales of bankruptcy  
9 claims?  
10 A Not that I recall.  
11 Q You stated at the beginning of the day that  
12 Planet Hollywood International has filed for bankruptcy  
13 twice?  
14 A Yes.  
15 Q And would you say that you were involved in  
16 those bankruptcies?  
17 A Yes.  
18 Q What was your involvement in those  
19 bankruptcies?  
20 A Well, I was the CFO at the time, so, you know,  
21 I would be res -- I was responsible for, you know,  
22 filing whatever documents needed to be filed with the  
23 courts. It was a prearranged bankruptcy that our  
24 advisors at the time -- I'm trying to think of who they  
25 were. I can't think of their name -- but sort of

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1 arranged with various bond holds that we had. It wasn't  
2 a prepack, but it was a prearranged bankruptcy, so we  
3 were -- we sort of knew going in what the -- what the  
4 recoveries was going to be. And Mr. Earl was able to  
5 raise some money from some existing stockholders, and  
6 family trust put in some money. And then there's just  
7 the overall administration of the -- of the bankruptcy  
8 reporting.  
9 Q Did it take up a substantial amount of your  
10 day-to-day work when they were ongoing?  
11 A Ongoing bankruptcies? Yeah, I mean, there's a  
12 lot more additional -- there's a lot of additional work.  
13 Q Did you inform the financial advisors for the  
14 Planet Hollywood bankruptcies that you were required to  
15 bring all decisions to Mr. Earl for his approval?  
16 A They knew that.  
17 Q How did they know that?  
18 A Mr. Earl told them.  
19 Q And did Mr. Earl tell them that in writing?  
20 A I have -- I don't know.  
21 Q Have you ever seen a writing from Mr. Earl to  
22 his financial advisors in the Planet Hollywood  
23 bankruptcy in which he stated that you were required to  
24 bring all decisions to his attention for approval?  
25 A No.

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1 Q Do you continue to deal with financial  
2 advisors for the group of companies referred to as Earl  
3 Enterprises today?  
4 A Could you repeat that?  
5 Q Does Earl Enterprises have financial advis --  
6 outside financial advisors?  
7 A Occasionally we talk to financial advisors.  
8 Q And do you talk to those financial advisors  
9 directly?  
10 A Yes.  
11 Q And have you informed those financial advisors  
12 that any decision must be approved by Mr. Earl?  
13 A Absolutely.  
14 Q And what form does that communication take  
15 place in?  
16 A With the financial advisors.  
17 Q So did you tell the financial advisors in  
18 writing that any decision you make has to be --  
19 A No.  
20 Q -- approved by Mr. Earl?  
21 A No. When we engage -- again, this is the way  
22 we've been operating for 30 years. We engage a  
23 professional. We engage somebody -- you know, I would  
24 talk to them. Robert Earl's the owner. He's got the  
25 vested interest in the business, you know. And

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1 especially in the financial area, it would be Mr.  
 2 Earl -- we can talk about it, but let's get Mr. Earl's  
 3 comments and let's get his -- it's his decision.  
 4 Q And does that happen in writing or in oral  
 5 communications of some sort?  
 6 A An understanding -- I would say oral  
 7 communications and understanding.  
 8 Q And is that memorialized in any agreements  
 9 that you have with your financial advisors?  
 10 A No.  
 11 Q And you said you've been doing business this  
 12 way for 30 years; is that correct?  
 13 A Yes.  
 14 Q And Planet Hollywood International is  
 15 currently not a public company; is that correct?  
 16 A Correct.  
 17 Q And Planet Hollywood International at some  
 18 point in the last 30 years was a public company?  
 19 A Yes.  
 20 Q And it's particularly important when you are a  
 21 public company to follow corporate formalities; isn't  
 22 that correct?  
 23 A Yes.  
 24 Q And also particularly important when you are a  
 25 public company to make sure the market understands the

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1 roles and responsibilities of corporate officers; isn't  
 2 that correct?  
 3 A Yes.  
 4 Q And even though you're no longer a public  
 5 company, I'm sure that Earl -- that it's correct that  
 6 Earl Enterprises endeavors to abide by all of its  
 7 corporate organizational documents at all times; isn't  
 8 that correct?  
 9 A Yes, with the understanding that Mr. Earl,  
 10 whether he has the formal title or not, is the  
 11 president, CEO, chairman of the board, ultimate owner or  
 12 looking after for his kids. His family -- he and his  
 13 family are the beneficiary or the owners of the company,  
 14 and, you know, he will make the decisions that are best  
 15 for his family.  
 16 Q So is it your testimony under oath that the  
 17 corporate document of companies doing business under the  
 18 Earl Enterprises banner are inaccurate?  
 19 MR. CHUBAK: Objection, mischaracterizes  
 20 testimony.  
 21 A I'm saying there's certain authorities that  
 22 are laid out on the corporate documents. But, you know,  
 23 even, you know, as president, manager, whatever I am of  
 24 all these entities, I am still very aware that my  
 25 ultimate responsibility is to the owners of the

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1 business, the shareholders, and in this case, it's  
 2 Robert Earl.  
 3 So, you know, while the authority on the  
 4 documents gives me permission to sign papers and do all  
 5 these other things, we just don't operate that way. I  
 6 wouldn't do anything unless I had Mr. Earl's approval if  
 7 I thought there was a -- you know, if there's something  
 8 that was contentious or just anything -- anything -- any  
 9 major decision.  
 10 Q And do you tell third-parties that you do not  
 11 act in accordance with the authority granted to you by  
 12 the corporate documents of Earl of Sandwich (Atlantic  
 13 City), LLC?  
 14 MR. CHUBAK: Objection, argumentative.  
 15 A No.  
 16 Q When were you appointed to serve on secured  
 17 creditors committees --  
 18 A Yes.  
 19 Q -- for the Caesars bankruptcy?  
 20 A January, if I get the year right, '15.  
 21 Q And do you currently serve -- well, when did  
 22 you -- when -- when did your service on the unsecured  
 23 creditors committee come to an end?  
 24 A I -- I technically think it ended just a  
 25 little while ago, a month or so ago, maybe.

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1 Q And did you attend meetings in person?  
 2 A Yes.  
 3 Q And how often were those meetings held?  
 4 A In-person meetings were infrequent. We  
 5 probably had maybe two or three a year. But we had --  
 6 for the majority of the bankruptcy, we had meetings  
 7 twice a week. We had conference calls twice a week  
 8 for -- for most of 2015 and a good portion of '16. Or  
 9 wait. Let me get my dates right. I don't know. I  
 10 mean, it's -- whether it was '15 or '16, but for a year  
 11 and a half, two years, there was lots of meetings.  
 12 Q Did you inform the members of the unsecured  
 13 creditors committee for the Caesars bankruptcy that any  
 14 decisions needed to -- before you could make any  
 15 decisions, you needed to obtain Mr. Earl's approval?  
 16 MR. CHUBAK: Objection.  
 17 A The decisions I made on the -- in the -- as a  
 18 member of the unsecured creditors committee to the  
 19 extent it didn't really affect the businesses owned by  
 20 Robert Earl. But that being said, I did -- you know,  
 21 when there was the -- I did discuss with Mr. Earl, you  
 22 know, what was going on the day-to-day what was going on  
 23 with the bankruptcy.  
 24 Q Again, my question was did you inform the  
 25 members of the unsecured creditors committee for the

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1 Caesars bankruptcy that before you could make any  
2 decisions, you needed to obtain Mr. Earl's approval?  
3 **A No.**  
4 **MR. CHUBAK:** We're seven minutes from 2:00  
5 p.m.  
6 **MS. LEWIS-GRUSS:** I think I can do this pretty  
7 quickly.  
8 (Avallone [Exhibit No. 64](#) was marked.)  
9 **BY MS. LEWIS-GRUSS:**  
10 Q Mr. Avallone, do you have what's been marked  
11 [Exhibit 64](#) bearing the Bates stamp Earl 27?  
12 **A Yes.**  
13 Q This document was produced by your counsel in  
14 this litigation. Is this an e-mail that you received  
15 from Mr. Hawkins?  
16 **A Yes.**  
17 Q And you've testified Mr. Hawkins is CFO of  
18 Planet Hollywood International?  
19 **A Yes.**  
20 Q And was there -- and Mr. Hawkins was  
21 forwarding you contact information for two people at  
22 Cowen & Company. Do you see that?  
23 **A Yes.**  
24 Q And why did Mr. Hawkins forward you the  
25 contact information for these two individuals?

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1 **A I don't recall.**  
2 Q Did you ask him to?  
3 **A I might have said, "Do we know anyone at**  
4 **Cowen?" I said I deal with -- Gavin O'Reilly was a**  
5 **market -- you know, is on the investment banking. These**  
6 **guys are maybe on the lending side. I don't -- you**  
7 **know, we just wanted to keep a relationship.**  
8 Q So you don't think that this e-mail was in any  
9 way connected to the dispute that we're here to talk  
10 about today?  
11 **A I might have asked them who do we know at**  
12 **Cowen, and those are the names he gave me.**  
13 Q And did you speak with Mr. Lauria or  
14 Mr. Viola?  
15 **A I do not recall.**  
16 Q Do you have a reason to believe that you did  
17 speak to either of those individuals --  
18 **A I -- I don't recall --**  
19 Q -- as you sit --  
20 **A -- either of these names as I sit here.**  
21 Q As you sit here today, do you recall speaking  
22 to anyone at Cowen in July of 2017?  
23 **A Not -- not right now. No, not off the top of**  
24 **my head.**  
25 **MS. LEWIS-GRUSS:** We can break for your call.

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1 That fine.  
2 **THE VIDEOGRAPHER:** Going off the record. The  
3 time is 1:55 p.m.  
4 (A 30-minute recess was had.)  
5 **THE VIDEOGRAPHER:** Please stand by. Going  
6 back on the record. The time is 2:21 p.m.  
7 **BY MS. LEWIS-GRUSS:**  
8 Q Good afternoon, Mr. Avallone. Did you ever  
9 speak -- did you ever speak to anyone at the law firm  
10 known as Proskauer about whether or not sale of Claim  
11 5858 would impact Earl's standing on the unsecured  
12 creditors committee?  
13 **A Yes.**  
14 Q When did those conversations occur?  
15 **A I don't recall when it occurred.**  
16 Q Do you believe that you had conversations  
17 with -- well, first of all, who at Proskauer did you  
18 speak to?  
19 **A Vincent Indelicato.**  
20 Q And do you believe that you spoke to  
21 Mr. Indelicato in January of 2017 regarding the question  
22 of whether the sale of Claim 5858 would impact Earl of  
23 Sandwich's standing on the unsecured creditors  
24 committee?  
25 **A I don't recall the date.**

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1 Q Do you have a reason to believe that it did  
2 not occur in January of 2017?  
3 **A I don't recall the date.**  
4 Q Is there anything that would help you remember  
5 what season that conversation occurred in?  
6 **A Not that I can think of.**  
7 Q And in what form did those communications  
8 occur?  
9 **A A phone call.**  
10 Q And did you ever exchange e-mails with  
11 Mr. Indelicato at any point in time concerning the  
12 issues surrounding the potential sale of Claim 5858?  
13 **A I don't recall.**  
14 Q And do you recall what Mr. Indelicato told you  
15 about whether a sale of Claim 5858 would impact Earl of  
16 Sandwich's standing on the unsecured creditors  
17 committee?  
18 **A Yes.**  
19 Q What did Mr. Indelicato tell you?  
20 **A If I sold the claim and I was no longer a**  
21 **creditor, I could no longer sit on the committee.**  
22 Q And when did Mr. Indelicato tell you that?  
23 **A I don't recall.**  
24 Q And do you believe that you had had that  
25 conversation with Mr. Indelicato prior to the time you

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1 discussed a potential sale of the claim with Cowen  
2 Special Investments?  
3 **A No.**  
4 Q And do you believe that you had had that  
5 conversation with Mr. Indelicato prior to the time  
6 during the spring of 2017 when you discussed the  
7 potential sale of the claim with Alex Ortega?  
8 **A No.**  
9 Q Did you tell Mr. Indelicato in January 2017  
10 that any sale of the claim known as Claim 5858 would  
11 require Mr. Earl's approval?  
12 **A No.**  
13 Q Did you tell Mr. Indelicato at any point in  
14 time that any sale of Claim 5858 would require  
15 Mr. Earl's approval?  
16 **A No.**  
17 Q Are you familiar with the term "litigation  
18 hold"?  
19 **A Yes.**  
20 Q What do you understand that term to be -- to  
21 refer to?  
22 **A Generally, I get a letter from an attorney**  
23 **saying that there's litigation, possible litigation, and**  
24 **don't destroy any e-mails or -- of the nature.**  
25 Q And did you receive a litigation hold with

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1 regard to the present action?  
2 **A I don't recall.**  
3 Q So would it be fair to say that you don't know  
4 the date on which you would have received a litigation  
5 hold in this action?  
6 **A I don't recall, yeah.**  
7 Q Did you do anything to collect documents in  
8 this action?  
9 **A Well, I think as part of the request I went**  
10 **through certain of my files and discussed with the legal**  
11 **counsel, and they instructed the IT department to**  
12 **download all of my e-mails and, you know, performed the**  
13 **search of the database.**  
14 Q Do you maintain hard copy records of any sort?  
15 **A Some documents.**  
16 Q What types of documents do you maintain in  
17 your hard copy files?  
18 **A Me personally or me acting as a corporate**  
19 **representative?**  
20 Q That's a fair question. You personally, what  
21 hard copy records do you maintain in connection with  
22 your business?  
23 **A I try not to keep paper. You know, there's**  
24 **certain originals of -- well, it depends. I can't think**  
25 **of anything offhand, but, you know, typically, if it's a**

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1 **legal document, you know, it's retained in a file over**  
2 **at legal. I very rarely print out any e-mails or**  
3 **anything of that nature.**  
4 **Reports and financial statements and things of**  
5 **that I keep for a short period of time and then discard**  
6 **them. I have some historical financial information as**  
7 **far as, you know, bound copies of audit reports I keep.**  
8 Q Do you maintain a calendar, a handwritten  
9 calendar?  
10 **A No.**  
11 Q Do you maintain any notation system that you  
12 can --  
13 **A I keep a "to do" list sheet that I do, and**  
14 **occasionally when I need to meet with Robert, I'll list**  
15 **things to talk about and work on. But, you know, once**  
16 **it's filled up, I throw it out and start the next list.**  
17 Q Do you know whether your secretary maintains  
18 your calendar?  
19 **A She does not.**  
20 Q Do you maintain your calendar on electronic  
21 form?  
22 **A I do.**  
23 Q Do you know whether the files of your  
24 secretary were searched for responsive documents?  
25 **A I don't recall.**

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1 Q And your secretary's first name is Lori; is  
2 that correct?  
3 **A Yes.**  
4 Q And I apologize for not knowing her last name.  
5 **A Connell.**  
6 Q Lori Connell. Okay. Do you know whether  
7 Mr. Hawkins's files were searched for responsive  
8 documents?  
9 **A I don't -- I don't know.**  
10 Q Do you know if anyone other than you and  
11 Mr. Earl were asked to search for responsive documents?  
12 **A I don't know, but I can't think of anybody**  
13 **else who would have any documents that would be**  
14 **responsive.**  
15 Q But Mr. Hawkins did receive inquiries from  
16 potential purchasers of Claim 5858; isn't that true?  
17 **A Yes.**  
18 Q And you testified that you reviewed some  
19 documents in preparation for today's deposition; is that  
20 correct?  
21 **A Yes.**  
22 Q Did you review a litigation hold in connection  
23 with preparation for today's deposition?  
24 **A No, I did not.**  
25 **MS. LEWIS-GRUSS: Well, I think that we can**

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1 conclude today's portion of your deposition subject  
2 to any questions that your counsel wants to ask and  
3 my right to ask follow-up questions.  
4 **MR. CHUBAK:** Let's talk. Let's go off the  
5 record for a moment.  
6 **THE VIDEOGRAPHER:** Going off the record. The  
7 time is 2:30 p.m.  
8 (A 1-minute recess was had.)  
9 **THE VIDEOGRAPHER:** Going back on the record.  
10 The time is 2:31 p.m.  
11 **MS. LEWIS-GRUSS:** I understand, Mr. Avallone,  
12 that your counsel is not going to ask you any  
13 questions during this deposition. Whitebox  
14 reserves its right to continue this deposition upon  
15 production of any additional documents relevant to  
16 the claims at issue today. That being said, I  
17 thank you very much for your time, and I hope you  
18 have a good remainder of your day.  
19 **THE WITNESS:** Thank you very much and have a  
20 safe flight back.  
21 **THE VIDEOGRAPHER:** This concludes the  
22 video-recorded deposition of Thomas Avallone. The  
23 time is 2:32 p.m. We are off the record.  
24 **THE REPORTER:** Do you want this typed up?  
25 **MS. LEWIS-GRUSS:** Yes.

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1 **THE REPORTER:** Do you want a copy?  
2 **MR. CHUBAK:** Yes.  
3 **THE REPORTER:** And rough drafts for both of  
4 you?  
5 **MS. LEWIS-GRUSS:** Yes.  
6 **MR. CHUBAK:** Yes, please.  
7 (The proceedings were concluded at 2:35 p.m.)  
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1 **CERTIFICATE OF REPORTER**  
2 **STATE OF FLORIDA:**  
3 **COUNTY OF ORANGE:**  
4 I, LAURA J. LANDERMAN, R.M.R., C.R.R., F.P.R., do  
5 hereby certify that I was authorized to and did  
6 stenographically report the foregoing deposition of  
7 THOMAS AVALLONE; that a review of the transcript was  
8 requested; and that the foregoing transcript, pages 1  
9 through 141, are a true and complete record of my  
10 stenographic notes.  
11 I FURTHER CERTIFY that I am not a relative,  
12 employee, attorney or counsel of any of the parties, nor  
13 am I a relative or employee of any of the parties'  
14 attorneys or counsel connected with the action, nor am I  
15 financially interested in the outcome of the action.  
16  
17 Signed this 22nd day of January, 2018.  
18  
19  
20 LAURA J. LANDERMAN, R.M.R., C.R.R., F.P.R.  
21  
22  
23  
24  
25

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1 **CERTIFICATE OF OATH**  
2 **STATE OF FLORIDA**  
3 **COUNTY OF ORANGE:**  
4 I, LAURA J. LANDERMAN, R.M.R., C.R.R., F.P.R.,  
5 Notary Public, State of Florida at Large, do hereby  
6 certify that THOMAS AVALLONE personally appeared before  
7 me this 10th day of January and was duly sworn/affirmed.  
8  
9 WITNESS my hand and official seal this 22nd day of  
10 January, 2018.  
11  
12 Identification: Professionally known  
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19 LAURA J. LANDERMAN, R.M.R., C.R.R., F.P.R.  
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